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ABSTRACT

This document compiles several studies on educational finance, including "Federal Aid to Education: Who Benefits?" "The Financial Aspects of Equality of Educational Opportunity," and "Legislator's Guide for School Finance." Also included are two briefs filed in the San Antonio vs Rodriguez case and a listing of current school finance litigation. The first study examines the effect of Federal dollars in five industrial States to (1) determine who was benefiting from the expenditures, (2) study the decisionmaking process affecting the allocation of funds, and (3) recommend changes in aid formulas and administration. The second study summarizes present inequities in school finance, reviews the causes of these inequities, examines recent court decisions, and concludes with a series of recommendations. The Legislator's Guide contains a brief analysis of four "real life" alternatives to school funding by State systems and a concise conceptual framework for approaching the study of school finance reform. (JF)

92d Congress }
2d Session }

COMMITTEE PRINT

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ISSUES IN SCHOOL FINANCE

SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY UNITED STATES SENATE

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INTRODUCTION

Recent court decisions affecting present methods of financing our public schools have generated public interest in the topic of school finance. This committee print compiles several studies on the financing of education including "Legislator's Guide for School Finance," a summary and recommendations to the National Legislative Conference's Special Study Committee on School Finance; "Federal Aid to Education: Who Benefits?"; and "The Financial Aspects of Equality of Educational Opportunity." Also included are two briefs filed in the *San Antonio v. Rodriguez* case presently before the U.S. Supreme Court and an up-to-date listing of school finance litigation.

These items are printed here for the use of the members of the Select Committee and others interested in school finance.

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FOREWORD

Among the major issues facing this Nation in the years ahead is how adequately and effectively we will use our resources to meet the social and human needs of our society and of our people. Even as we approach the 200th anniversary of our independence; poverty, hunger, substandard housing, inadequate health care, poor education, prejudice and discrimination are pervasive problems plaguing every region of the country.

One of the chief problems confronting public education is the need for greater financial resources. Although many small cities and rural counties face grave problems with regard to supporting public education, the financial crisis in urban areas is particularly acute.

As the Select Committee has delved into the problems related to equal educational opportunity, the economics of public education has clearly arisen as a critical factor. Not only do we need to find new ways to finance public education, we must also explore ways to use existing funds more wisely. We must know more about how money is being presently spent, in what areas and what effects and impact these investments are having in terms of educational outcome for students.

Federal Aid to Public Education: Who Benefits? is a study which addresses itself to just these questions. The study, which was prepared by the Policy Institute of the Syracuse University Research Corporation and the Maxwell Graduate School of Citizenship and Public Affairs of Syracuse University, under the direction of Stephen K. Bailey, Alan K. Campbell, Joel S. Berke and Seymour Sacks, examines the effect of Federal dollars for education in five industrialized States and raises important questions about the way we finance our public schools. This study is reproduced because of its important implications for all of us who are concerned and committed to the prospect of achieving equal educational opportunity for all of America's children.

FEDERAL AID TO PUBLIC EDUCATION:

WHO BENEFITS?

by

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January 31, 1971

A Project Conducted by

THE POLICY INSTITUTE OF THE SYRACUSE UNIVERSITY RESEARCH CORPORATION

and

THE MAXWELL GRADUATE SCHOOL OF CITIZENSHIP AND PUBLIC AFFAIRS

SYRACUSE UNIVERSITY

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Preface

This study had its origins in the winter of 1968-69 when John W. Gardner, then Chairman of the National Urban Coalition, began to speculate on the degree to which federal education programs were assisting school systems in the urban areas of the nation. As he sought an answer to this question, he rapidly became aware that information was simply unavailable on who was benefiting from federal educational support. At his urging, his deputy, James A. Kelly, began discussions with Stephen K. Bailey, Chairman of the Policy Institute of the Syracuse University Research Corporation and Alan K. Campbell, Dean of the Maxwell Graduate School of Citizenship and Public Affairs of Syracuse University. Together they approached the Ford Foundation for a grant to launch a substantial study of federal aid to education.

The purposes of that study were three: first to determine the patterns of allocation of aid, i.e. who was benefiting, second to study the decision-making processes that determined those patterns of distribution, and third to recommend changes in aid formulas and administrative practices that would assure that federal aid to education went where it was most badly needed. In June of 1969 the project was funded by the Ford Foundation, and researchers went into the field to begin the task of assembling data on the pattern of allocation of federal aid to education.

While this is the project's first report on the patterns

of allocation of federal aid, earlier versions of our study of the fiscal problems facing urban schools (Chapter II of this report) have appeared in two places: "The Financial Crisis of the Urban Schools" in Riles, Wilson C. The Urban Education Task Force Report, New York: Praeger Publishers, 1970 and "The Impact of Present Patterns of Funding Education for Urban Schools" in A Time For Priorities: Financing the Schools for the 70's, Washington, D. C. National Education Association, 1970.

In the eighteen months that this project has been underway, the authors have accumulated an impressive debt of gratitude. To some extent, the list of research staff that follows this preface is an attempt to recognize the assistance we have received. But there are people mentioned there who deserve special acknowledgment and others whose names do not appear at all.

In every state capital that we visited there are officials from the Superintendents of Instruction to clerks in the financial bureaus who gave us strategic help in locating the information we needed. In particular, the cooperation of John Polley of the New York State Department of Education must be acknowledged. At the U. S. Office of Education Carol Hobson of the National Center for Educational Statistics was most cordial and helpful. Eugene McLoone, formerly of the U. S. Office of Education and the National Education Association and now of the University of Maryland provided invaluable insight into the potential and problems in educational finance data. John Callahan formerly with the Maxwell

School and now with the Advisory Commission on Intergovernmental Relations provided indispensable help in assembling materials on which chapter two is based. Donna Shalala of CUNY helped with the analysis and preparation of the first draft of the report.

Several members of our own staff gave their time and their energies much more generously than we had any right to expect. Bill Wilken colated and programmed data, developed tables, and conducted statistical analyses from September 1969 until May of 1970. To our colleagues who assisted in the final weeks of manuscript preparation -- criticizing both the substance and the style of our early efforts and helping with all details of publication -- we are especially indebted. They are Robert Goettel, Paul Irwin, Jerry Calderone, Susan Van Wiggeren, and our editor Dorothy Sickels. To Pat Iacune who patiently and accurately typed the hundreds of pages of intricate tables in the Statistical Workbook, we are indeed appreciative. Most of all, our thanks go to Kathleen Kennedy, project secretary, who relieved us of a substantial share of the administrative load connected with the project and typed succeeding drafts of this report with neverfailing good humor.

Without the help of the people named above and on the following page, this report could not have been completed. The authors, however, assume full responsibility for the accuracy of the data and the soundness of the analysis.

Syracuse, New York
January 1971

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CHAPTER I

INTRODUCTION

Federal aid to education has probably stimulated more controversy per dollar than has any other domestic aid program. Over its long history, debates over federal support for education have pinched the most sensitive nerves of the American body politic, the nerves of religion, race, and states rights. Frequently, those debates have been couched in terms of educational finance.

As this is written, the issue of religion is surfacing once again as financially imperiled parochial school systems search for sources of additional financial support. Debates over the effects of race and federalism on education currently rage at even greater intensity, raising questions about the appropriate mix of national goals and state-local prerogatives. Specifically, the discussion often turns to the question of general (block) grants versus categorical educational aid. Increasingly, too, both the objectives and effectiveness of federal revenue support for education are coming under profound and critical scrutiny. These include education of children of low-income families, general aid for school districts "impacted" by federal facilities and by children of federal employees, support for upgrading curriculum offerings, guidance services, library materials, and vocational education. New national priorities, such as assistance to hard pressed urban education systems, are emerging

to compete with established policies. Through congressional debates and hearings, executive branch meetings and task forces, Presidential vetoes, messages, and commissions, the goals of the federal government in education are being actively and explicitly re-evaluated.

Unfortunately, these debates and discussions are handicapped by critical gaps in knowledge. At present there is a deplorable paucity of useful information available to anyone -- public official, researcher, educator, or interested citizen -- who seeks to understand the fiscal impact of the federal contribution to educational finance.

The frustration of a recent panel of academic experts and top education officials, the Urban Education Task Force of the Department of Health, Education, and Welfare is symptomatic: "The difficulties encountered by the committee and others in focusing attention on the aggregate impact of federal aid on a particular type of local district, say urban districts, underscores the presently fragmented patterns of thinking about federal aid to education. Federal policy toward a particular district is primarily a function of the relative distribution of federal dollars; today, we discuss future policy without really knowing what present policy is."^{*}

Our report presents a systematic evaluation of the role that federal funds are playing in the total local-state-federal complex of educational finance. The basic issue for investigation is this: what is the impact of federal aid to education on the finances of elementary

^{*} See Appendix A for a fuller discussion.

and secondary schools? More specifically, we sought answers to these questions:

Are there distinctive problems of educational finance in urban areas?*

Is there a bias in aid that favors central city, suburban, or rural areas?

Does that bias, if any, differ among various aid programs?

Are school districts with lower capacities to finance education being aided more or less than richer districts?

Are districts with greater and more expensive educational needs receiving more federal aid than those whose needs are less severe?

What has been the trend over the last few years in the distribution of federal aid?

What outstanding administrative problems dilute the impact of federal programs?

And most important of all, is federal assistance consistent with the problems facing public education?

Our conclusions based on those questions are found in the text, the tables, and appendices of the following chapters of this report. It may be useful, however, to indicate at this point some of

*A note on terminology: The terms "urban" or "urbanized" are used to refer to cities and older, more densely populated suburbs that have many characteristics in common with central cities. The term "metropolitan" refers to a Standard Metropolitan Statistical Area (SMSA) as defined by the Census Bureau. We use the term "central city" (CC) to denote the core city of SMSA. "Outside central city" (OCC), "outlying areas," and "suburbs" all refer to the remainder of the SMSA. We designate all areas outside SMSAs as "non-metropolitan" or "rural."

our major findings.

First, in the most urbanized areas of the nation we found a unique crisis in educational finance caused by a general deterioration in their fiscal situation combined with higher demands and costs -- for education and other public services -- than exist in neighboring communities. Yet the school districts that received the most federal aid per pupil were not in urban but in rural areas. Within the metropolitan areas central cities received proportionately more total federal assistance than their suburbs, but the amounts received were far too small to make up for the suburban advantage in local wealth and state assistance. Patterns of individual programs, however, varied immensely and often defied consistent explanation. In a number of important cases, however, as in ESEA II and III, Vocational Education, and NDEA III (described on pages 10 and 11), major cities have received even less aid than should have been allotted to them in view of their proportion of the state's student population.

Second, with regard to the relationship of federal aid to district capacity to support education, we found that there was no important compensating effect. While districts with lower income tended to get slightly more aid on the whole than those with higher income, there was no such compensatory relationship with assessed property valuation, the most common source of revenue for local school support.

Third, one important measure of educational need is the proportion of poor and minority group pupils in a district. Here, because of the impact of Title I (see page 10), we found that federal

aid is significantly related to educational need. Districts with lower income and higher proportions of non-white pupils received more aid than those with lower proportions of such pupils. Unfortunately, the magnitude of assistance was meager in proportion to the immensely costly task of education for the poor and culturally deprived.

Fourth, over the four-year period of our study, amounts of aid received by individual school districts varied markedly and erratically. Furthermore, during the last year studied, almost half of the districts in metropolitan areas reported an actual decrease in per pupil amounts of aid.

Fifth, although questions of program administration and design are a part of a later phase of this study, we did think it useful to comment on some outstanding problems at this point. ESEA money, for example, has largely gone for a variety of special and ancillary programs and has not been utilized to improve the central portion of the curriculum presented to disadvantaged children. The failure to concentrate funds on the students most in need of compensatory education has frequently resulted in a superficial veneer of fragmented programs or new equipment, rather than in an integrated, high impact intervention to achieve major educational change. Dilution of the impact of federal aid has also come about through the improper but widespread use of Title I as general aid for system-wide purposes.

Sixth and last, federal aid is intended to provide strategically useful funds for educational purposes not otherwise receiving adequate support. Our study suggests, however, that the amounts of aid are simply too small in view of the problems that con-

front public education. At present, for the nation as a whole, federal aid constitutes less than 7 percent of public elementary and secondary school revenues. For the five industrialized states of our study (California, New York, Michigan, Massachusetts, and Texas), the proportions ranged from little over 3 percent in New York to 10 percent in Texas. In per pupil absolute terms, federal aid averaged between \$22 and \$50 per pupil in those same states. Given our findings on the threatening fiscal crisis facing urban education, these amounts are patently insufficient to overcome the financial problems of the urban public schools.

The data, analyses, and conclusions of this report are contained in three chapters. This chapter gives an overview of the study. The second describes the urban fiscal context in which federal aid is operative. The third chapter reviews the historical development of federal aid to education and sets forth the findings and conclusions we have drawn as to the impact of federal aid. Appendices to this report describe: (A) the shortcomings in present information systems relating to federal aid and educational finance, (B) a more detailed description of the methodology of the study, and (C) a series of statistical tables which were drawn on in developing this summary report.

In addition to its analyses and conclusions, then, the report and its appendices present a body of organized data on federal educational revenues and on the fiscal, social, and economic character of school districts that will enable other interested persons to make their own interpretations.

Scope of the Study

Two related but separate research techniques have been utilized in this study. First, to analyze the fiscal context of urban education, we have sought to relate the financing of education to general trends in population movement, business conditions, and governmental finances in thirty-seven large metropolitan areas. Second, in order to assess the impact of federal aid to education, we have conducted an intensive investigation of the distribution of federal aid to a large sample of school districts in five industrialized states.

A. The Fiscal Context of Urban Education

Emphasis in this analysis is placed on the social, economic, and fiscal disparities found between central cities and their surrounding suburban areas in the nation's thirty-seven largest Standard Metropolitan Statistical Areas (SMSAs). The magnitude of these disparities indicates that cities and their suburban rings face very different fiscal problems and have very different capacities to deal with their problems.

Unfortunately, an analysis that focuses upon the relationship of educational to social, economic, and non-educational fiscal developments in a sample as extensive as the thirty-seven largest SMSA's cannot at the same time discuss individual suburban communities and their schools. The noncoterminality of suburban systems of school and non-school government complicates comparisons. There are even difficulties in the case of large cities. Only in

states where school districts are coterminous with individual municipal areas (i.e., primarily the New England states) can fiscal comparisons be made between central city and individual suburban governments. Therefore, the study aggregates the entire suburban component of individual metropolitan areas and compares that suburban component to its core city.

Much of the data drawn upon for this analysis was taken from published and unpublished materials of the 1967 Census of Governments. Population estimates were based on interim Census and Rand McNally estimates. Personal income data were allocated to cities and suburbs on information from Sales Management and Survey of Current Business.

Since there are usually a number of governments overlying the central cities in the thirty-seven largest SMSAs, finances had to be allocated between the cities and their suburbs by relative population or tax collections, as appropriate. In the case of allocating overlying governmental revenues, central city finance reports from the cities in question were examined to determine the amounts of taxes collected within the city by these overlying governments.

B. The Pattern of Allocation of Federal Aid to Education

Research on the allocation of federal aid to education was conducted by examining 573 school districts located in the five urbanized states. The sample was designed to insure that all larger school systems were included in its coverage. It contains better

than half the pupils in the five states. Our data and conclusions, therefore, are primarily applicable to the cities, suburbs, and rural portions of these industrialized, largely metropolitan, states where more than two-thirds of the nation reside. Although our primary interest is in those metropolitan areas, sufficient diversity exists in our sample school districts to draw some conclusions about the impact of federal aid in non-metropolitan areas as well.

Special emphasis in our report is placed upon states as units of analysis. Most similar studies of national policy base their analyses on samples constructed as microcosms of the nation, giving attention to regional representativeness, but seldom seeking to include sub-samples accurately representative of constituent states. Our concern, however, is with studying the units that make decisions on the allocation of federal aid to school districts. Since the federal statutes, regulations, and administrative practices place major responsibility on state education departments for making those allocations, states are obvious units for such a study. Furthermore, since we are interested in the interrelationship of local, state, and federal finance, our analysis must contain units representative of these different systems of educational support. Since states take distinctive approaches to raising and distributing revenues for their public schools, it is appropriate to select states as analytical units for that reason as well.

The study reports on a four-year period, beginning with

the 1965 fiscal year and continuing through the 1968 fiscal year. The starting point provides a baseline just prior to the large increase in federal education spending that came with the implementation of the Elementary and Secondary Education Act of 1965. The use of the three succeeding years permits us largely to overcome interpretive difficulties caused by the unevenness and bunching of federal fiscal flow in any one year, and allows us to see trends over time. It is worth noting, too, that changes in the levels and purposes of federal appropriations for elementary and secondary education have been minor in the two fiscal years that have followed those studied, so that our data and conclusions remain characteristic of the present system of federal aid to education.

All federal aid for elementary and secondary education reported by the school districts in our sample were included in the analysis. Eight major programs of aid were examined individually. They represent more than 80 percent of total federal revenues for elementary and secondary education, and more than 95 percent of such revenues actually going to school districts. (Headstart and other OEO programs, which account for an additional 15 percent of federal revenue for elementary and secondary education, are often channeled through poverty agencies.) The remaining 4 percent consists of federal funds usually reported in a residual or miscellaneous category by local districts.

The eight major programs are:

- (1) Title I of the Elementary and Secondary Education Act of 1965 (ESEA), financial assistance to local educational agencies for the education of children of low-income families;

- (2) Title II of ESEA, school library resources, textbooks, and other instructional materials;
- (3) Title III of ESEA, supplementary educational centers and services;
- (4) Title III of the National Defense Education Act of 1958 (NDEA), financial assistance for strengthening instruction in science, mathematics, modern foreign languages, and other critical subjects;
- (5) Title V-A of NDEA, guidance, counseling, and testing;
- (6) Vocational Education (aid for vocational education from all federal programs);
- (7) School Lunch and Milk Program; and
- (8) School Assistance in Federally Affected Areas, including Public Law 874 (general aid to offset increased school costs related to federal employees) and Public Law 815 (school construction money for similar purposes).

Our original intention had been to trace payments to school districts from each federal program providing assistance for elementary and secondary education. Initial conferences with state and federal officials and surveys of fund reporting, however, quickly demonstrated that information was unavailable on many of the smaller programs -- at least by any research techniques that could be undertaken within reasonable time and expense limits. Allotments to states could be found, but the receipts by school districts were lumped together -- and therefore lost individually -- in such categories as "all other" or "miscellaneous outside revenues."

Some important programs proved impossible to trace to the district level within acceptable ranges of accuracy and effort. Headstart expenditures, for example, were often allotted to prime contractors by the Office of Economic Opportunity, and then sub-

contracted. The final point of expenditure often went unreported, so that actual time periods and expenditures could not be ascertained with sufficient precision for our purposes. In addition, Headstart amounts expended by public school authorities were frequently but a small proportion of Headstart monies being expended within the school districts. It seemed necessary, therefore, to omit expenditures for Headstart from our study.

One final word of caution should be stated for those who have not had experience with educational finance data. Despite rigorous efforts and substantial resources, we experienced enormous difficulty collecting and comparing data, even for jurisdictions as large as school districts. In our survey differences in reporting among districts within states and among states themselves posed constant problems. There are neither uniform definitions nor common sources of educational information. For example, methods of counting attendance vary significantly from state to state. In a number of districts the category of "all other federal aid" is larger than the combined aid from specific titles. Furthermore, even though our sources of information were the official figures reported to state educational agencies by local school districts, project researchers uncovered a number of inaccuracies and discrepancies in the "official" figures. Collecting data on more than 40 categories of revenues and expenditures for 573 school districts for each of four years leaves room for error on our part; however, during the twelve months of analysis and data refinement since the raw information was collected in the field, the material has been subjected to as rigorous an attempt to assure accuracy as we could devise.

CHAPTER II

THE FISCAL CONTEXT OF URBAN EDUCATION

Raising adequate revenues for the support of education is a threatening problem in a large proportion of the nation's school systems. There are, of course, exceptions to this statement: enclaves with high nonresidential taxable resources relative to the number of school children; wealthy suburban communities with high levels of residential property, income, and educational expectations; and rural districts with stable or declining populations and relatively minimal educational demands. But in most cities, suburbs, and rural areas, heightened demand for educational services and salaries are running head-on into local taxpayer resistance, state economy drives, and a pause in increased federal spending. In many areas of the country, school boards faced with fiscal crises have resorted to school shutdowns, the elimination of special projects, and increasing average class sizes.

Hardest hit of all are the larger cities of the nation where three interacting phenomena strike most directly. First, because of problems common to highly urbanized areas — a declining fiscal situation combined with steeply rising demands and costs for education and other public services — large cities find it more difficult than most other areas to support educational services from their own tax resources. Second, education in central

cities imposes higher costs than are found in less densely populated places. This is true because of the composition of the city student population, because of inherently higher urban cost factors, and because of aggressive and effective teacher unions. Third, cities frequently function under a legal framework that is far more restrictive and state aid laws which are far less generous than is true of suburban and rural school districts. Together, these factors have caused a crisis in urban educational finance. This chapter will discuss that crisis.

Metropolitan Developments

The roots of the crisis in large city educational finance are found in the redistribution of population and economic activities that has taken place in the last two decades. The shifts have not been random. A sorting-out process has occurred -- leaving the poor, undereducated, aged and non-white in the central cities and taking heavy manufacturing, many retail establishments and other kinds of business activities to the suburbs along with middle and upper income families. The result is that the tax base of cities has become insufficient to meet the resource needs of the high cost city population.

City poverty, in other words, often exists only a few miles from substantial suburban wealth. This adjacent ring of relative affluence complicates the plight of large city school districts because cities and suburbs compete for tax dollars, for instructional

personnel, and for the quality of their schools. In this competition, cities are at a marked disadvantage. This is not to suggest that many suburbs, particularly the older ones, do not share central city problems. In fact, there are suburbs in this country which are increasingly taking on central city characteristics and consequently have similar resource needs. For reasons already given, however, our data on SMSAs were dichotomized into central city and outside central city, and the statistical analyses were performed accordingly. Yet because the data on suburbs are diluted and distorted by the urbanized areas they contain, all comparisons between city and suburbs understate the real plight of urban areas. The following statistics express only in part the stark fiscal situation in urban America.

A. Social, Economic, and Fiscal Trends

Population growth in large cities has nearly ceased in recent years, while their suburbs are enjoying a dynamic rate of increase: between 1960 and 1967, core cities in the nation's thirty-seven largest SMSAs grew by only 3.8 percent, while their suburbs increased by 17.6 percent. Despite this slower city growth — and in some cases the total absence of growth — population densities in the cities continued to exceed those in the suburbs fifteen to twenty times over.

Within these differential growth rates lie marked differences in the characteristics of the metropolitan population. Central city black population, for example, has risen to 21 percent according to latest Census Bureau estimates, while surrounding areas have remained fairly stable at 5 percent. According to two recent

surveys, income differences also are extreme, with central city average family income running more than \$1500 to \$2000 behind suburban incomes. Significantly higher proportions of poor families and significantly lower proportions of families in more comfortable circumstances live within rather than outside core cities.

Economic activity shows a similar picture of central city disadvantage. Between 1958 and 1967 in the 37 largest SMEAs suburban retail sales increased at a real rate of 106 percent, central city sales by only 13 percent. These differing rates of growth resulted in a decline in the central city share of metropolitan retail sales from 63 percent in 1958 to 54 percent in 1963 to 49 percent in 1967 (Table II-1).^{*} Other indicators tell a similar tale. Employment in manufacturing and wholesaling is declining in central cities while increasing in the outlying areas.

B. Tax Base Deterioration

One major consequence of these trends for educational finance is seen in the decreased capacity of urban communities to raise and to devote resources to the support of their schools. The population and economic shifts noted above have combined to depress the income base of central cities relative to their suburbs and to cause a much slower growth in the urban property tax base. Since the income of its residents is a major source of public resources, the relatively new position of cities as comparatively low-income areas is a basic problem for educational support.

^{*}Tables in this chapter begin on page 24.

More directly, however, it is the property tax base that is tapped for virtually all locally raised revenue for education. The traditionally higher city property tax base has been threatened in recent decades by a very slow rate of growth. In the northeast, the most recent studies show that suburban property values climbed an average of three times as much as did those of the central cities; in the midwest, suburban property appreciation was more than six times that in the core cities. For all sections of the nation, suburban property growth rate was more than two and one-half times that of the central cities.

Growth in educational expenditures has far outstripped this slow rate of growth in the urban property tax base. Professors James, Kelly, and Garms documented this phenomenon in 14 large cities between 1930 and 1960*. They found that per pupil educational expenditures rose three times as fast as property values.

C. The Problem of Municipal Overburden

Taxable resources are becoming increasingly scarcer in the core cities than in the rest of metropolitan America. But what makes the picture even bleaker is that cities are unable to devote as large a share of their resources to education as can suburban districts. Cities possess a high-cost population and an older physical plant which produce greater demands for general government services than in the suburbs — demands for greater health, public safety, sanitation, public works, transportation, public welfare, public housing, and

*H. Thomas James, James A. Kelly, Walter I. Garms, Determinants of Educational Expenditures in Large Cities of the United States, School of Education, Stanford University, Stanford, California, 1966.

recreation services. Central cities devote nearly 65 percent of their budgets to non-educational services, while their outlying communities devote less than 45 percent. Put another way, core cities assign only a third of their funds to education, while neighboring communities consistently spend over half of their public monies for schools.

Cities raise about 30 percent less per capita (Table II-2) for education from local taxes. On the other hand, central city residents tax themselves considerably more heavily than is the case with their suburban counterparts; city per capita tax effort (taxes as a percent of income) is over 40 percent higher (Table II-3) than in surrounding areas. In short, core cities spend less per pupil than do other parts of metropolitan areas even while taxing themselves more heavily.

Higher Urban Educational Costs

One additional consideration lends particular poignancy to the plight of urban finance: dollar for dollar, central cities get less education for their expenditures than do other parts of metropolitan areas. In other words, city education generally costs more per unit than does education elsewhere. There are two reasons for this phenomenon. First, the social and economic character of the urban school population requires an exceedingly high-cost educational program; second, many expense items in the school budget simply cost more in the cities.

A. Higher Costs Imposed by the Character of Urban Enrollment

The major factor accounting for the inherently more costly nature of schooling in the large cities is the composition of the urban school population. Higher proportions of the educationally disadvantaged, of the poor, of the handicapped, of the non-white, and of immigrants are located in central cities. The special educational needs of these groups require far greater educational resources to enable them to achieve normal grade level performance. Examples of such expensive programs are: education for the culturally disadvantaged, programs for non-English speaking adults and children, programs for children to whom standard English is virtually a foreign language, adult education in general, summer school, programs for the physically and emotionally handicapped (where expenditures per pupil are greater by a factor of 4 or 5 to 1) and vocational schools 35 percent more costly than academic secondary schools.

The percentage of non-white student population (primarily black, Puerto Rican, and Chicano) is another rough but useful index of the need for more educational resources. Non-white students tend to come from homes where parents have lower average years of schooling, schooling frequently acquired in inferior segregated schools. A host of recent studies have demonstrated the importance of parental educational background to the quality of a student's achievement in school. Those studies indicate that what the home does not provide, the schools must make up if educationally disadvantaged children are to achieve on a par with their more fortunate classmates. The impli-

cations for the cost of the school program are clear.*

What should be kept in mind is that the non-white child is represented in even larger proportion in the schools than in the total population of the largest cities. For example, in 1965 the non-white percentage of the general population of Chicago was 28 percent, yet the non-white percentage of enrollment in public schools was 52 percent. Similar patterns may be found in all parts of the nation. Table II-4 compares, for 1960 and 1965, the proportion of non-white public school enrollment. This difference in population and enrollment proportions is a result of age distribution, family composition, and the greater tendency of white parents to send their children to private and parochial schools.

B. Urban Cost Differentials

In addition to the inherently costlier nature of the urban school population, city schools must pay more for many items in their budgets than do school systems in other areas. Take for example, instructional salaries, the largest item in any school budget. In a study for the U.S. Civil Rights Commission, Professor Charles Benson pointed out, "City costs are characterized by a general expenditure raising phenomenon, namely, the age of their teachers. Also, for institutional reasons, cities tend to make promotions internally. On both counts, central cities tend to have school systems that are staffed primarily

*For a useful discussion of a number of other studies, see Chapter III of James W. Guthrie and others, Schools and Inequality. Cambridge: MIT Press, 1971 forthcoming.

by teachers of substantial seniority. Again for institutional reasons, teachers are paid largely on the basis of seniority. It follows that central cities must pay higher salaries for teachers." In the last few years, of course, another factor has operated to increase instructional expenditures in large cities: militant teacher unions. Through tight organization and aggressive tactics, unions in the nation's metropolises have won substantial salary increases and other cost-raising benefits.

In addition to instructional salaries, personnel expenses for maintenance, secretarial, and security services are also higher in central cities as shown by Bureau of Labor Statistics reports. Higher incidences of vandalism also play a role in pushing costs upward.

Land for school buildings is also more expensive in cities. While comparisons are complicated by the more sprawling campus-style architecture of non-urban schools, the extraordinarily high costs associated with assembling even small plots for city schools appears to outweigh those in the suburbs. For example, an intensive study of education in Michigan found that in 1967 Detroit paid an average price per acre of \$100,000 in contrast with approximately \$6,000 per acre in surrounding school districts.

State Regulations and State Aid

Urban education systems, of course, are conducted within a legal framework and a financing system that involve a large measure of state participation. Both state regulations and state aid leave cities at a disadvantage relative to suburban and rural areas.

The costs of retirement systems, for example, are often assumed by state governments, but in many states the large school districts are omitted from the state program and must bear retirement costs primarily from local revenues. Even where smaller districts are responsible for retirement contributions, a heavier assignment is usually charged to the large city school district or its overlying government.

When we examine the impact of state aid for education, we find that aid systems continue to bear the marks of their origins. Educational aid formulas were designed in the first decades of the century to compensate for disparities between the rich cities and the poorer outlying areas. Relative fiscal positions are now reversed, but the formulas continue to give lesser proportions of aid to cities than to suburbs, and to give more aid to rural than to metropolitan areas. Those conclusions have been drawn in many previous studies. Our project confirms these findings. In New York, Texas, and Michigan, metropolitan areas get anywhere from \$17.00 to \$58.00 less per pupil in state aid than do non-metropolitan areas. Only in California is the reverse true. Within the metropolitan areas we found that the central cities in all states except Massachusetts get less aid than their surrounding suburbs. As Table II-5 shows, the difference can be considerable. Looking at individual metropolitan areas the gap is often larger. For instance Syracuse, New York, in 1968 received \$170.00 less per pupil than its surrounding area in state aid. Los Angeles for the same year received \$95.00 less. Of the five major metropolitan areas in our study, only in Boston did the central city receive more

state aid than its metropolitan area.

Data on the thirty-seven largest metropolitan areas showed the disparities to be even greater: suburban areas received one-third more educational aid per capita in 1967 than did the core cities.

Summary

Though raising adequate revenues for education is a serious problem in all areas of the nation, we have found that the fiscal crisis is most threatening in the larger cities of the nation. The trend in metropolitan development has left them with a less affluent population and a resource base that is failing to grow at a rate sufficient to meet increasing needs. Because large urban areas have higher public service needs, a much lower proportion of their expenditures can be devoted to education than is true in suburban areas. The result is, of course, proportionately lower educational expenditures in cities than in their environs despite higher tax efforts in the cities. Unfortunately these problems are compounded by the inherently more costly nature of urban education: expenses are higher in big cities and pupil populations there include more children in need of expensive supplementary educational techniques. State regulations and state aid rather than compensating for these urban disadvantages often act to exacerbate them. This, then, is the fiscal context for our examination of the allocation of federal aid to education.

TABLE II-1

Retail Sales, Deflated by General Price Increase,
For 37 Largest Metropolitan Areas, 1958-1967

Metropolitan Area	% Retail Sales in CC (CC/SMSA)			% Increase (Real) in Retail Sales 1958-1967	
	1958	1963	1967	CC	OCC
Northeast	(50.7)	(42.6)	(37.7)	(-.3)	(75.2)
Washington, D. C.	52.1	42.1	32.9	10.5	134.8
Baltimore	71.4	58.1	53.4	4.9	128.2
Boston	38.9	31.2	26.0	-1.4	79.2
Newark	30.0	25.8	21.2	-14.1	37.1
Patterson-Clifton	36.0	23.9	24.6	.9	74.5
Buffalo	52.2	40.1	38.9	-9.9	54.7
New York	72.9	67.1	64.8	9.7	60.2
Rochester	60.4	52.9	48.5	18.1	91.3
Philadelphia	51.5	43.4	40.2	6.2	65.4
Pittsburgh	37.5	34.1	33.5	7.8	28.7
Providence	55.7	50.4	31.2	-36.3	73.1
Midwest	(66.0)	(56.2)	(48.8)	(9.5)	(127.1)
Chicago	65.3	56.9	51.5	5.3	86.6
Indianapolis	76.8	65.5	60.4	20.0	160.8
Detroit	51.1	42.7	36.1	.7	86.4
Minneapolis-St. Paul	73.4	61.5	54.4	7.9	149.7
Kansas City	59.9	63.3	50.1	55.2	64.3
St. Louis	48.1	37.5	32.7	-7.6	76.2
Cincinnati	64.2	57.0	45.0	4.6	129.4
Cleveland	74.0	54.8	39.6	-15.2	269.1
Columbus	80.2	69.0	67.2	22.8	141.9
Dayton	60.5	47.4	41.3	3.6	125.5
Milwaukee	73.1	63.1	58.4	7.4	108.3
South	(74.4)	(68.6)	(64.5)	(28.7)	(108.3)
Miami	54.9	40.4	37.5	-2.5	98.2
Tampa-St. Petersburg	75.4	66.6	65.8	30.9	108.9
Atlanta	71.4	62.8	57.6	37.7	153.9
Louisville	70.5	64.0	57.5	14.0	101.8
New Orleans	79.0	71.3	65.3	21.0	141.9
Dallas	77.7	71.2	68.4	36.6	119.2
Houston	75.7	82.4	74.8	55.9	63.3
San Antonio	91.2	90.0	89.6	36.4	79.9
West	(74.4)	(68.6)	(64.5)	(28.7)	(108.3)
Los Angeles-Long Beach	48.8	41.3	39.9	22.2	75.4
San Bernardino	44.9	42.1	NA	NA	NA
San Diego	64.0	56.4	53.9	25.6	91.8
San Francisco	54.5	48.0	43.4	16.3	81.6
Denver	70.5	55.9	53.3	11.1	132.4
Portland	76.3	58.8	59.6	28.1	180.3
Seattle	71.7	63.5	54.3	18.0	152.5
36 SMSAs	63.0	54.1	49.3	12.6	105.8

Source: John Callahan. Advisory Commission on Intergovernmental Relations.
Metropolitan Disparities - A Second Reading. Bulletin No. 70-1, Washington,
D.C.: the Commission, January, 1970. A Joint Project of the ACIR and
the SURC Policy Institute.

TABLE II-2
Per capita Taxes For 37 Largest Metropolitan Areas, 1966-1967

Metropolitan Areas	Total		Per Capita Taxes			
	CC	OCC	Education		Non-Education	
			CC	OCC	CC	OCC
Northeast	(223)	(174)	(61)	(105)	(159)	(79)
Washington, D. C.	\$340	\$147	NA	NA	NA	NA
Baltimore	193	127	NA	NA	NA	NA
Boston	232	162	\$55	\$108	\$177	\$54
Newark	259	224	57	128	202	95
Paterson-Clifton	180	214	74	135	106	79
Buffalo	221	172	40	55	181	118
New York	305	255	90	139	215	115
Rochester	213	176	68	116	145	60
Philadelphia	176	139	51	85	125	54
Pittsburgh	176	126	52	71	124	55
Providence	157	169	NA	NA	NA	NA
Midwest	(187)	(145)	(75)	(89)	(113)	(56)
Chicago	189	168	65	104	124	64
Indianapolis	180	141	78	98	102	42
Detroit	170	160	50	95	119	64
Minneapolis-St. Paul	190	175	63	107	128	68
Kansas City	206	113	86	66	120	47
St. Louis	203	137	71	87	132	50
Cincinnati	193	110	70	69	114	41
Cleveland	181	172	81	112	100	59
Columbus	129	146	67	108	62	39
Dayton	217	113	107	78	111	35
Milwaukee	203	163	73	55	130	107
South	(135)	(104)	(45)	(52)	(90)	(52)
Miami	197	152	62	62	135	90
Tampa-St. Petersburg	142	106	44	44	98	62
Atlanta	159	105	56	55	103	51
Louisville	135	110	39	76	96	34
New Orleans	109	60	39	10	70	50
Dallas	142	108	51	60	91	48
Houston	122	154	41	99	81	55
San Antonio	71	34	28	11	43	23
West	(230)	(173)	(95)	(91)	(135)	(83)
Los Angeles	250	225	100	100	150	125
San Bernardo-Long Beach	234	202	115	99	119	103
San Diego	169	177	73	87	96	91
San Francisco	322	222	85	127	237	95
Denver	220	154	114	89	107	65
Portland	208	131	91	79	118	52
Seattle	205	100	85	53	119	47
Weighted average for 37 SMSAs	219	170				
Weighted average for 34 SMSAs	217	172	73	96	144	76
Unweighted averages	195	150	69	84	126	66

Source: John Callahan. Advisory Commission on Intergovernmental Relations. Metropolitan Disparities - A Second Reading. Bulletin No. 70-1. Washington, D.C.: the Commission, January, 1970. A Joint Project of the ACIR and the SURC Policy Institute.

TABLE II-3

Taxes as a Percentage of Personal Income
For 37 Largest Metropolitan Areas, 1966-1967

Metropolitan Areas	Local Taxes as a Percentage of Personal Income	
	Central City	Outside Central City
Northeast	7.2%	4.8%
Washington, D. C.	9.1	4.4
Baltimore	7.2	3.5
Boston	8.4	4.0
Newark	8.8	5.5
Patterson-Clifton	6.4	6.2
Buffalo	7.7	5.2
New York	8.0	5.6
Rochester	6.4	4.8
Philadelphia	6.2	4.0
Pittsburgh	5.8	3.9
Providence	5.4	5.6
Midwest	5.9	3.9
Chicago	5.2	3.9
Indianapolis	5.3	3.9
Detroit	4.9	4.2
Minneapolis-St. Paul	5.1	4.8
Kansas City	6.3	3.4
St. Louis	7.0	3.8
Cincinnati	6.3	3.5
Cleveland	6.4	4.2
Columbus	4.8	3.9
Dayton	6.8	3.2
Milwaukee	6.4	3.9
South	4.7	3.3
Miami	6.7	4.6
Tampa-St. Petersburg	5.3	4.2
Atlanta	5.1	2.9
Louisville	4.6	3.2
New Orleans	3.7	2.1
Dallas	4.5	3.3
Houston	4.0	5.3
San Antonio	3.3	1.0
West	6.1	5.5
Los Angeles-Long Beach	6.3	6.3
San Bernardino	8.2	8.0
San Diego	5.2	6.1
San Francisco	7.1	5.7
Denver	6.5	5.0
Portland	5.9	4.2
Seattle	3.7	3.5
Total	6.1	4.3

Source: John Callahan. Advisory Commission on Intergovernmental Relations. Metropolitan Disparities-A Second Reading. Bulletin No. 70-1. Washington, D.C.: the Commission, January, 1970. A Joint Project of the ACIR and the SURC Policy Institute.

TABLE II-4

Non-white Population and Non-white School Enrollment
For Fifteen Largest Cities: 1960 - 1965

City	Percent Non-white of Total Population		Percent Non-white of School Population	
	1960	1965	1960	1965
New York	15%	18%	22%	28%
Chicago	24	28	40	52
Los Angeles	17	21	21	21
Philadelphia	27	31	47	55
Detroit	29	34	43	56
Baltimore	35	38	50	61
Houston	23	23	30	34
Cleveland	29	34	46	49
Washington	55	66	78	88
St. Louis	29	36	49	60
Milwaukee	9	11	16	21
San Francisco	18	20	31	43
Boston	10	13	16	26
Dallas	19	21	26	27
New Orleans	37	41	55	63

TABLE II-5

State Aid Per Pupil by Metropolitan Areas, 1967

State	Total	CC	OCC	Diff. in Favor OCC
New York	\$475.20	\$392.90	\$485.88	\$ 92.98
California	271.65	250.73	274.06	23.33
Texas	206.21	183.01	210.48	27.47
Michigan	263.06	227.88	268.41	40.53
Massachusetts	118.41	223.07	114.93	-108.14

CHAPTER III

THE PATTERN OF ALLOCATION OF FEDERAL AID TO EDUCATION

Federal aid to education has a history that dates from the Northwest Ordinance of 1785. Even the modern form of assistance, categorical programs of grants-in-aid, has a continuous tradition stretching back more than fifty years to the Smith-Hughes Vocational Educational Assistance Program of 1917. A brief overview of the major developments in federal educational programs may be useful at this point.

During the Depression, federal programs to furnish inexpensive milk and school lunches were begun. The Second World War brought impacted areas aid to school districts called upon to educate influxes of children whose parents were attached to military bases and other federal facilities. In the 1950's, spurred by the national trauma inflicted by the Soviet launching of Sputnik, federal assistance grew significantly through the National Defense Education Act aimed at upgrading programs in science, mathematics, foreign languages, and other critical areas.

Then in 1965 Congress passed the Elementary and Secondary Education Act (ESEA) to serve two ambitious and challenging educational goals: (1) achieving equality of educational opportunity by targeting funds for the education of children from low income families and (2) raising the quality of all education by supporting experimentation

and innovation. In programmatic content and in level of funding, ESEA represented a quantum jump in the federal role.

Throughout this history, federal aid has served both to meet educational objectives and to assist school districts in bearing the costs of the most expensive domestic governmental service: elementary and secondary education. This chapter concentrates on the second of those purposes, and analyzes the impact federal programs have on the financing of public elementary and secondary education in the United States.

The Concept of Equity and Federal Aid

In selecting the areas of inquiry and the kind of analysis we would perform, the philosophy of the authors has played an important part. We feel it necessary, therefore, to make explicit our belief that one of the central questions to be asked about any governmental service is whether it is equitably distributed. In the case of state and local resources for education, we believe the distribution of services is basically inequitable.

The chief reason for this inequity is that the level of expenditures for education is determined primarily by the wealth of more than 17,000 individual public school districts in the nation. Local taxable resources, which provide more than half the revenue for running the public schools, vary immensely from district to district. For the children who live in those districts the quality of education varies accordingly. State

aid laws, which supply an additional 42 percent of school revenues, fail to overcome the disparities among districts and in many states actually reinforce them.

That the level of support devoted to one's schooling should vary markedly depending upon where one happens to live is, we believe, both rationally and ethically questionable. But when the variations in school spending are in inverse relationship to the incidence of the need for educational services, the inequity is compounded. As discussed in the previous chapter, the greatest need for educational resources exists where the handicaps to learning are greatest, namely among the poor, the handicapped, and the victims of prejudice and neglect. These groups tend to be concentrated where taxable resources are least available for education, notably, highly urbanized areas and particularly the large cities of the nation.

In analyzing the pattern of federal aid to education, therefore, we consider aid to be equitably distributed when it tends to offset disparities among school districts in regard to wealth (income and property valuation), when it provides assistance to urbanized areas in proportion to their fiscal disadvantages, and when it supplies proportionately more money to districts with higher numbers of educationally disadvantaged pupils.

Within that framework our findings indicate that:

- (1) federal aid to education in the aggregate has only a slight equalizing tendency at best, and that within a number of metropolitan areas it displays distinctly disequalizing characteristics;

- (2) the degree of equalization, where it does exist, is usually too small to offset pre-existing disparities among school districts, and
- (3) a number of individual federal programs operate to help the rich districts get richer.

To be more specific, we found that:

- a. Non-metropolitan areas, largely rural and small town in character, tend to receive more federal aid per pupil than do metropolitan areas.
- b. While central cities get more total federal aid than their suburbs, the amount of federal aid is too small to offset the suburban advantage in local and state revenues. Suburbs averaged \$100 more per pupil in total revenues than their core cities in four of the five states in the study.
- c. With the exception of ESEA Title I, federal programs frequently provide more funds to suburban districts than to central city districts. Large cities appear to receive less money from programs such as ESEA II, ESEA III, NDEA III, and Vocational Education than their proportion of the states' enrollment would suggest.
- d. Districts with lower income tend as a general rule to get somewhat more federal aid than districts with higher income, but there are numerous glaring exceptions. With regard to property valuation, federal aid shows no equalizing effect at all.
- e. Somewhat more federal aid goes to districts with higher proportions of non-white students. However, the amounts are not in proportion to the magnitude of the added costs in educating the disadvantaged.
- f. During the four-year time period under study, the amounts of aid received by local districts varied erratically. Almost half the metropolitan areas in the sample reported an actual decrease in revenues during the last year of the study.

- g. ESEA I funds appear to go largely for ancillary programs and are not utilized to improve the central portion of the curriculum presented to disadvantaged children. The failure to concentrate funds on students most in need of compensatory education, and the widespread but improper use of Title I as general aid for system-wide purposes have diluted the effect of that program.
- h. The amounts of federal aid are simply too small to be of anything but marginal help to financially imperiled educational systems. In comparison with total revenues from all sources which ran from \$475 to \$1,000 per pupil in the five states, we found total federal aid averaging only \$22 to \$50 per pupil, or from 3.3 percent to 10 percent of average district revenues. These amounts are inadequate in face of the massive financial problems facing education.

Federal Funding for Education - the National Picture

Before we begin our discussion of the findings in detail, let us briefly trace the levels of federal educational funding and their relationship to educational expenditures for the nation as a whole. The growth of federal aid to education over the past thirteen years had been both significant and erratic (Table III-1).^{*} Over that entire period, aid grew nearly six-fold, from just under \$500 million to \$2.9 billion. Between 1957 and 1964 federal funds almost doubled. They doubled again in one year, 1965-66, as a result of the passage of ESEA. However, during the last five years this overall growth pattern slowed and, if allowance is made for inflation, has actually declined in real terms. Furthermore, as a proportion of total educational revenues, federal aid rose consistently over a decade to a high of 8 percent in 1967-68, but has since declined steadily to 6.9 percent in 1970-71 (Table III-2).

^{*}Tables in this chapter begin on page 54.

In any case, while the proportion of federal educational support has not been impressive, federal aid has exerted programmatic or financial leverage in certain areas of national policy. In the areas of vocational and agricultural education, and more recently, science and language instruction, federal funds have had an important impact. In some program areas such as language laboratories, federal funding constitutes the preponderant proportion of support. In short, federal aid to education provides a small but important proportion of total educational expenditures.

Federal Aid Distribution

An understanding of the levels of federal educational funding provides an orientation to an analysis of the impact of federal aid to education. Our concern, however, is with federal funds as they actually reach school districts. It is only there that the real impact of aid programs can be felt. Ideally, we would have liked to have reported finances by individual schools, but such data are currently unavailable. The statistics that follow, therefore, have been assembled from official reports of local districts to their state education departments. As a result, figures for the states of our samples (for example, the proportion of federal aid to total revenues) may differ somewhat from the amounts of federal aid reported for states as a whole by state education

departments. For one thing, certain direct state expenditures will elude us. For another, small federal programs or those administered by multi-district authorities may go unreported by individual school districts while state officials are able to report the state's total allotment. Yet on balance, the most important consideration was to report finances as close as possible to the point where they are transformed into real educational resources (services, equipment, and facilities), a procedure that we have adapted from the recent innovation in data collection, the Elementary and Secondary General Information Survey of the United States Office of Education (USOE).

A. Rural and Metropolitan

One of the most consistent patterns of impact that emerges from our data is that school districts in non-metropolitan areas, largely rural and small town in character, get more federal aid per pupil than do metropolitan areas (Table III-3). In California, Texas, and Michigan, non-metropolitan areas receive an average 50 percent more aid per pupil than do the metropolitan areas. The greater importance of federal aid in the rural areas is underscored by the fact that such aid provides a consistently larger proportion of educational revenues there than it does in metropolitan school districts. New York State comes as an exception to these findings because of the immense impact of New York City with its

high concentrations of families receiving welfare payments (AFDC) and thus qualifying for large amounts of ESEA Title I funds.*

B. Central City and Suburban

Examination of aid distribution within metropolitan areas -- between central cities on the one hand and their suburbs on the other -- reveals that while core cities receive more aid than their suburbs, the amounts of federal aid are insufficient to overcome the suburban advantages in locally raised revenues and state aid. With the exception of Michigan where there is a small (\$17.00) revenue edge favoring central cities, suburbs have an average of \$100 more to spend per pupil than do the central cities (Table III-4).

In Massachusetts, for example, central cities receive almost twice the dollar amount of federal aid per pupil as the suburbs (\$69 and \$38), and federal aid represents 10.2 percent of all central city revenues compared to 4.8 percent in suburbs. Despite this important difference, suburban school districts in that state still receive 15 percent (\$104) more from all sources than do central city districts. This pattern is repeated in New York and Michigan. Thus, while central cities in three of the five states receive more federal aid both absolutely and proportionately than do their suburbs -- and essentially the same amounts in the remaining two states -- the general picture is one in which federal aid has failed to close the wide gap in revenues available to education between cities and their suburbs.

*In determining the amount of Title I aid a district is eligible to receive, the major criterion used is the number of children whose parents receive Aid to Families with Dependent Children (AFDC).

But these data reflect only one dimension of the problem of raising sufficient revenues for education in cities. As we noted in Chapter II, the higher costs of providing comparable educational services in cities compound existing disparities.

In comparison with the non-metropolitan portions of the five states, central cities fare less well. Only in New York is there a clear central city advantage. In both California and Texas rural areas receive considerably more federal aid, and in Michigan the two areas receive virtually the same amounts. In regard to total revenues for education, there is no clear pattern, with non-metropolitan areas and central cities each leading the other in two states.

C. Title I of ESEA

As the largest federal aid to education program, ESEA Title I deserves special mention. In 1967, it amounted to \$17.26 per pupil in the states in our sample. This amount was almost half (46 percent) of the total federal aid received. Even more than total federal aid, ESEA I has had a greater impact in rural areas than in metropolitan centers. In 1967, non-metropolitan areas received 85 percent more Title I funds than did metropolitan areas (\$25.50 to \$13.85). This difference more than accounts for the overall disparity between federal funds to metropolitan and non-metropolitan areas.

Within the states, Texas and New York are relatively high in the amounts of ESEA Title I received (\$18.25 and \$16.27) while the other three states received between \$10 and \$12.

When the distribution of ESEA I within metropolitan areas is examined, the central cities uniformly do well in relation to their surrounding communities. The only major exceptions are Houston, Dallas and Anaheim, which receive slightly less money per student in ESEA I than do the outside city areas.

D. Other Major Federal Programs

While the formula for the allocation of Title I funds works toward equity for central cities within SMSAs, the pattern of distribution of other federal education programs does not. The point is illustrated by the following example and by a survey of the 50 largest cities in the nation.

How a very wealthy suburb can garner substantially more federal aid than a neighboring deteriorating central city may be seen in the case of Schenectady and Niskayuna, New York (Tables III-5 and III-6). Schenectady, a central city whose depressed financial situation can be seen most readily in the fact that it qualifies for three times more Title I aid per pupil than Niskayuna, received only \$60 per pupil from all federal programs. Niskayuna, probably the wealthiest suburb in the area, is able to take advantage of a sufficient range of federal programs to receive \$84 per pupil, or 140 percent the amount of its proportionately poorer neighbor. State aid acts to reinforce the disparity. With a deteriorating fiscal situation and a school pop-

ulation with proportionately three times the number of disadvantaged pupils as its neighbor, the central city receives \$100 less per pupil for education.

A study by the USOE examined entitlements under five federal programs to compare the share of state allocations going to large cities with the share of the state's student population in those cities. Except for Title I of ESEA, the study found that large cities were receiving less aid than their proportionate share of the state's population would imply. In other words, not only were federal aid programs not compensating for the special fiscal problems of cities discussed in Chapter II; federal aid programs were not even giving cities their proportionate share (Table III-7). In the 50 largest cities in the nation, with 21.3 percent of the pupil enrollment in their combined 28 states and 26.4 percent of the disadvantaged by Title I count, their receipts by program were 15.9 percent of Vocational Education funds, 16.2 percent of NDEA Title III (instructional equipment), 18.1 percent of ESEA II (textbooks and library resources), and 20.5 percent of ESEA Title III (supplemental services and centers). Only under ESEA I did the 50 cities receive funds equal to their percentage of state's student population.

The 25 largest cities of the nation received \$280 million for the 6 major education programs. With 12 percent of the enrollments in their states, this represented 14.7 percent of the state's federal aid, but only 10.4 percent of aid other than Title I.

Federal Aid and the Capacity to Support Education

This section will examine the relationship of federal aid to some indicators of district capacity to support education:

median family income, state equalized property valuation, state aid, and total revenues for education.

A. Federal Aid and Median Family Income

Let us look first at the relationship of federal aid to average income among school districts within each of the five states. When simple correlation coefficients are computed, we find an inverse relationship (signified by the negative values in

Correlations of Revenue from Major Federal
Programs with Median Family Income
in Districts of Metropolitan Areas

<u>California</u>	<u>New York</u>	<u>Texas</u>	<u>Michigan</u>	<u>Massachusetts</u>
-.27	-.31	-.67	-.17	-.30

the table) in every state in the sample, indicating that where income is lower, federal aid is higher. A perfectly inverse relationship would have a -1.00 coefficient, so it is clear that only in Texas (-.67) is the relationship a particularly strong one.

We have looked more intensively into the income-aid relationship in the largest metropolitan area of each of the five states. As Table III-8 shows, in all states except Massachusetts the wealthiest suburban districts received the least federal aid per pupil and the poorest districts got the most when central cities

were not considered. However, if we look for a consistently equalizing effect the results are disappointing. In Houston and Detroit, for example, districts with moderately high family incomes get more federal aid than districts with moderately low income.

Even where the pattern is an equalizing one, it is frequently very mild in its effects. In the Boston metropolitan area, for instance, the wealthiest districts receive \$29.00 in federal aid per pupil while the poorest receive \$33.00, a difference of only \$4.00 despite a nearly 50 percent differential in their average income levels.

Glaring examples of disequalization are found in each of the large metropolitan areas. Beverly Hills, the richest district in the Los Angeles area with a 1960 median family income of just under \$12,000, received \$17.00 per pupil in federal aid. The Hudson district, with about \$6,700 in median family income, received only \$14.00. In Massachusetts, Quincy (average income \$6,800), which qualifies for large amounts of Impacted Areas (PL 874) aid, received \$123.00 per pupil in federal money whereas Salem, with average income of under \$6,000, received only \$9.00 and Malden, with average income of \$6,200, received only \$18.00 in federal aid. In each of the cases mentioned above, the richer districts spend twice as much money from all sources per pupil than do the poorer districts.

Core cities received more federal aid than any other districts in three of the states, more than their low income

positions alone would suggest. This phenomenon is probably the result of the high proportion of welfare (AFDC) families residing in central cities. Yet even in those states where a relatively high amount of federal aid goes to the cities, the amount those cities spend per pupil from all revenue sources is consistently among the very lowest of the districts within the metropolitan area.

When individual federal aid programs are examined, even the mild overall equalization effect disappears except for Title I of ESEA. Taking one random district from each of the categories of median family income in the New York metropolitan area, we find that the pattern of distribution of individual programs defies simple explanation (Table III-9).

Without ESEA I, totals of federal aid display an essentially disequalizing tendency. With the exception of Bellport, richer districts get more money than do poorer ones. Individually, ESEA II and Lunch and Milk money are fairly evenly distributed among districts. Other programs have no ascertainable relationship to median family income.

B. Federal Aid and the Property Tax Base

The concept of equalization has traditionally been linked to the size of the real property tax base of school districts. The uneven location of real property has long been seen as a major cause of inequality in the educational opportunities provided in different

communities. To overcome these disparities, equalization formulas for the distribution of state educational aid typically allocate funds, to some greater or lesser degree, in inverse proportion to the level of property value per pupil. Aid ceilings, floors, and sharing ratios, however, often serve to defeat the nominal purposes of such programs. In addition, while property value may serve as a realistic yardstick of comparative fiscal ability among the relatively comparable school districts of the suburban and rural areas, students of public finance question its usefulness in measuring the entirely different fiscal position of large cities and highly urbanized areas. There, as we showed in Chapter II, the greater service needs of an urban population place a far higher demand upon the property tax base than is the case in less densely populated areas. Proportionately less locally raised revenue can, therefore, be devoted to education in the large cities than in the suburban and rural areas on an equal amount of taxable property.

Correlations of Revenue from Major Federal
Programs with State Equalized Property
Valuation in Districts of Metropolitan Areas

<u>California</u>	<u>New York</u>	<u>Texas</u>	<u>Michigan</u>	<u>Massachusetts</u>
-.18	-.03	-.21	.22	-.14

Given the shortcoming of valuation as a universal measure of capacity, it is still interesting to note whether federal aid offsets district property tax base disparities. The simple answer is that it does not. Correlation coefficients display no significant relationships. While four out of the five states do show an inverse relationship (federal aid is higher where valuation is lower) the values are so low as to be meaningless. In one state the relationship is even reversed: in Michigan, as we saw, more federal aid goes to districts that are richer.

In the five major metropolitan areas, federal aid has at best a neutral and at worst a disequalizing impact. Leaving central cities aside, in many instances the wealthier districts do better than other categories of suburban districts in garnering federal aid. In the New York, Houston, Detroit, and Boston areas more aid goes to the wealthiest category than to the poorest, and in the metropolitan areas of New York and Detroit, the richest group of districts outside the core cities receives more aid than any other category (Table III-10).

C. Federal Aid and State and Local Revenues

The relationship between federal and state aid is of great interest. Some observers have viewed federal aid as complementary to state aid, others as a measure to offset and redirect state priorities and patterns. Our results provide little support

for either view ; correlation coefficients showed virtually a random relationship except in Texas where there was a slight (.29) correlation with state aid patterns.

Correlations of Federal Revenue with State Aid to
School Districts in Metropolitan Areas

<u>California</u>	<u>New York</u>	<u>Texas</u>	<u>Michigan</u>	<u>Massachusetts</u>
.07	-.18	.29	-.08	.06

The effect of federal aid when compared to local revenue is somewhat similar. Although the correlations are all negative, the degree of correlation is of an inconsequential order in all states except Texas, thus indicating that federal aid assists districts with less revenue for education as much as districts with greater funds for their schools.

Federal Aid and Non-White Enrollment

One measure of a district's educational resources is, as discussed in Chapter II, the proportion of educationally disadvantaged students in the schools of the system. As a proxy for such data, we have taken the district's proportion of non-white students. We

find that the flow of federal aid is significantly related to the proportion of non-white (primarily black, Puerto Rican, and Chicano) students in a school district. This relationship emerges from the correlation coefficients, which show a consistent positive relationship. The higher the proportion of non-white students, the more federal aid a district tends to receive. While the strength of the correlation is only of moderate power, collectively they are the strongest relationships that emerged from the variables tested.

Correlation of Revenue from Major Federal
Programs with Proportion of Non-white
Students in Metropolitan School Districts

<u>California</u>	<u>New York</u>	<u>Texas</u>	<u>Michigan</u>	<u>Massachusetts</u>
.33	.31	.21	.54	.43

To illustrate the phenomenon in more detail, we have compared the districts in the New York metropolitan area that have more than 15 percent non-white school populations with the average of their income quartiles. With the exception of one rather high income district in which rapid black immigration has been a very recent

characteristic, districts with large black pupil proportions receive far more federal aid than do other districts of comparable income.

Title I of ESEA is the primary source of these higher revenues (Table III-11)

Offsetting the higher costs of education for the disadvantaged is an important form of equalization. Since non-white populations tend to have a significantly higher proportion of educationally disadvantaged pupils, this pattern of greater amounts of federal aid, notably Title I aid, to districts with larger non-white populations constitutes a distinct equalizing effect. Unfortunately, the amounts of added aid, roughly averaging \$20 to \$30 more per pupil, can have relatively little impact in comparison with the immense costs involved in effective education for the disadvantaged.

The Trend in Federal Aid

One important factor in understanding the impact of revenue is the pattern of aid over time and its effects on educational policy. When school districts are confident of steadily rising amounts of aid, those aid programs are likely to become an integral part of the total educational planning of administrators and school board members. However, where aid varies markedly from year to year, educational planners are handicapped by uncertainty as they develop next year's academic program, contract for facilities and equipment, and hire additional staff.

During the years covered by our study, federal aid reaching school districts has differed from year to year and has followed no

discernible pattern. While all the states and metropolitan areas in the sample show increased per pupil aid for the four-year period, in the last year of the period almost half the districts in metropolitan areas reported an actual decrease in per pupil amounts of aid. An additional fourth of the areas maintained the same level of aid, and only the remaining 30 percent showed an increase. Yearly revenues reported by the major cities in New York State illustrate the phenomenon (Table III-12).

Problems of Program Administration

To this point we have confined our discussion to an analysis of the patterns of allocation of federal aid to education. Subsequent reports, some already in preparation, will examine the decision-making processes on federal aid to education in school districts, in state education departments, and in federal educational agencies. In this report, however, we think it may be useful to make at least cursory mention of some of the outstanding problems of program administration that weaken the impact of programs of federal aid to education.

The operation of Title I is of particular interest because its funds are allocated on the basis of a poverty formula, thus providing substantial assistance to central cities and other communities with greater than average need for educational resources. The effect of the leveling of the rate of growth of federal educational aid is seen in its effect on Title I. In the 1968-69 school year, "cutbacks of \$68 million combined with the growing costs of education resulted in \$400 million less for disadvantaged pupils in the local schools this year than was available in the first year of the program,"

according to the Fourth Annual Report of the National Advisory Commission on the Education of Disadvantaged Children. In addition, the growth in the number of eligible pupils has made for a sharp decline in funds available for each Title I participant -- both because of changes in the federal eligibility formulas and because many cities have experienced a marked increase in the number of pupils from families receiving AFDC payments (which increases the number of Title I eligibles). Testimony presented before the House Education and Labor Committee showed that in New York State, Title I funds per poverty eligible pupil had declined to little more than half, from \$365.64 to \$200.10 in the first four years of Title I operation (Table III-13).

Dilution of the tendency of aid to overcome educational disadvantage has occurred not only because of total funding levels but also because of administrative procedures of many state and local education agencies. Since the poverty factors which are employed to allocate funds to the county and district levels are not used in determining the particular children who will benefit from Title I programs (poor educational performance is the criteria), school officials have considerable leeway in determining the particular beneficiaries of federal funds. By failing to concentrate funds to provide total educational effort directed toward students most in need of compensatory education, many school systems have spread Title I allocation thinly in order to include as many students as possible. The result is a superficial veneer of fragmented programs

of new equipment rather than an integrated, high impact intervention to achieve major educational change. In statistical terms this may be seen in the average national expenditure for each pupil participating in a Title I program last year: \$95.00. With average per pupil expenditure from all sources running at just under \$700 per pupil nationally at the same time, this level of Title I spending is highly unlikely to achieve marked change in the quality of education afforded the educationally disadvantaged.

There are other reasons why Title I of ESEA has failed to bring the degree of aid for urban education problems that was originally expected. Because of the uncertainty and late availability of funds, a circumstance which has prevented educators from being able to plan for Title I as they develop their program months in advance of the start of the school year,* ESEA money has largely gone for a variety of special ancillary programs and has not been utilized to upgrade the central portion of the educational curriculum presented to disadvantaged children. Thus while Title I funds have been of importance to central city school districts and have helped to offset the imbalance of financing described in earlier sections of this paper, the effect has not been even as helpful as the gross figures might suggest.

In December of 1969 a report by the Washington Research Project titled Title I of ESEA Is It Helping Poor Children stirred

*For a full discussion of many of these problems, see Stephen K. Bailey and Edith K. Mosher ESEA: The Office of Education Administers a Law, Syracuse University Press, 1968, Chapters IV and V.

wide interest. The report documented a series of instances in which Title I funds were being used for purposes other than assisting disadvantaged children. The report included the following conclusions: "We found that although Title I is not general aid to education but categorical aid for children from poor families who have educational handicaps, funds appropriated under the Act are being used for general school purposes; to initiate system-wide programs; to buy books and supplies for all school children in the system; to pay general overhead and operating expenses; to meet new teacher contracts which call for higher salaries; to purchase all-purpose school facilities; and to equip superintendents' offices with paneling, wall-to-wall carpeting and color televisions.

"Though Title I funds are supplemental to regular money, there are numerous cases where regular classroom teachers, teacher aides, librarians, and janitors are paid solely from Title I funds ...

"Title I funds are not to supplant other Federal program funds. But the extent to which Title I funds have been used to feed educationally deprived children, to purchase library facilities and books, to provide vocational education for disadvantaged students, raises serious questions as to whether Title I funds are being used to supplant National School Lunch, Child Nutrition Act, Title II ESEA and Vocational Education Act funds.

"Title I funds are not for the benefit of non-poverty children, yet teaching personnel, equipment, supplies, and materials purchased with this money are found in some of the most affluent schools where not a single educationally disadvantaged child is enrolled.

"And Title I funds are not to equalize racially segregated schools. Yet many Southern school systems which have steadfastly refused to comply with the Constitutional mandate to desegregate use Title I funds to make black schools equal to their white counterparts. These funds are sometimes used to actually frustrate desegregation by providing black children benefits such as free food, medical care, shoes and clothes that are available to them only so long as they remain in an all-black school."¹

Shortly after the publication of the report, Commissioner James E. Allen appointed an Intragovernmental Task Force to improve the functioning of Title I. Among the early products of the Task Force was the "comparability requirement." Issued in the summer of 1970, it requires school districts to demonstrate that Title I schools are the equal of non-Title I schools in teacher pupil ratios and instructional expenditures without and before the expenditure of Title I funds. While the effects of such a requirement would be immense, problems of implementing it are also great. At present it is far too early to judge its effectiveness.

¹A report by the Washington Research Project of the Southern Center for Studies in Public Policy and the NAACP Legal Defense and Educational Fund, Inc., Title I of ESEA Is It Helping Poor Children? December, 1969, pp. 57, 58.

Conclusion

This chapter has examined the pattern of allocation of federal aid to education. The story in general is grossly disappointing. Rural areas receive far more aid proportionately than metropolitan areas, even more than central cities. Many individual aid programs give more help to rich districts than they do to poorer ones. Fund flows over time are so uneven, both within fiscal years and from year to year, that harried school planners often end up shunting federal aid funds to the least pressing, least important of their academic priorities. And problems of program administration further dilute the effect of federal dollars. Most notable of all, the magnitudes of aid are so small -- averaging from \$22 to \$50 per pupil in the five states of the sample and from 3.3 percent to 10 percent of total revenues per pupil (Table III-14) -- that they must be found wanting when compared with the enormous tasks faced by, and inadequate money available for, public education. That central cities -- with their social, economic, and fiscal problems -- should be averaging significantly and consistently less in per pupil revenues than their less threatened suburbs is no less than a national disgrace (Table III-4).

There are a few glimmers of light. Overall federal aid provides proportionately more aid to the fiscally threatened

core cities than to their more favored environs.

Federal aid tends to go in greater proportions to districts with lower than average incomes and higher than average proportions of non-white students. These tendencies toward equity, however, are far too little to overcome the basic maldistribution of educational finances in this nation.

It may be well, in conclusion, to remind ourselves of what that maldistribution implies, for statistical correlations and dollar amounts have a way of hiding as much as they convey. The real impact of inadequate and discriminatory funding levels is evidenced in high dropout rates, student performance below grade level, difficulties in attracting and holding qualified teachers, and overcrowded classes held in aged and dilapidated school buildings. The costs of these conditions are varied and immense. They are reflected in higher welfare, law enforcement, and job training expenses of the cities, in the flight of the middle class to the suburbs, and in the human tragedy and property destruction of urban unrest.

Remedying the problems on the educational agenda will not be easy. It will require the development and implementation of new approaches and special programs. Retrained and better trained teachers will be needed. New class configurations and clinical techniques may also be called for. A variety of strategies will be employed but one factor will be common to all: they will be costly. Until the federal government assumes the responsibility for providing an adequate and equitable pattern of aid to education, the crisis in American education will continue.

TABLE III-1

Revenues for Public Elementary and Secondary Schools
(in thousands)

School year	Total	Federal	State	Local
1957-58	\$ 12,181,513	\$ 486,484	\$ 4,800,368	\$ 6,894,661
1959-60	14,746,618	651,639	5,768,047	8,326,932
1961-62	17,527,707	760,975	6,789,190	9,977,542
1963-64	20,544,182	896,956	8,078,014	11,569,213
1965-66	25,356,858	1,996,954	9,920,219	13,439,686
1966-67	27,256,043	2,162,892	10,661,582	14,431,569
1967-68	31,092,400	2,472,464	12,231,954	16,387,982
1968-69	33,743,748	2,455,547	13,729,344	17,558,857
1969-70	38,192,011	2,767,045	15,627,751	19,797,215
1970-71	41,936,556	2,892,957	17,226,776	21,816,823

Source: National Education Association, Research Division, Estimates of School Statistics

TABLE III-2

Revenue Received from Federal, State, and Local Sources
for Public Elementary and Secondary Schools
(by percentage)

School Year	Federal Sources	State Sources	Local Sources
1957-58	4.0%	39.4%	56.6%
1959-60	4.4	39.1	56.5
1961-62	4.3	38.7	56.9
1963-64	4.4	39.3	56.4
1965-66	7.9	39.1	53.0
1966-67	7.9	39.1	53.0
1967-68	8.0	39.3	52.7
1968-69	7.3	40.7	52.0
1969-70	7.2	40.9	51.8
1970-71	6.9	41.1	52.0

Source: Committee on Educational Finance, National Education Association

TABLE III-3

Revenue Sources by Metropolitan
and Non-metropolitan Areas, 1967[illegible]

TABLE III-4

Federal Aid and Total Revenue
By Central City, Outside Central City, and Non-Metropolitan Areas, 1967

State	Fed. Aid	Total Revenue	% Fed. Aid
California			
Central City	\$39	\$684	5.8%
Outside Central City	40	817	4.8
Non-Metro	54	641	8.4
New York			
Central City	68	876	7.7
Outside Central City	31	1037	3.0
Non-Metro	31	923	3.4
Texas			
Central City	38	479	7.9
Outside Central City	36	485	7.4
Non-Metro	63	535	11.8
Michigan			
Central City	29	683	4.2
Outside Central City	17	666	2.5
Non-Metro	30	629	4.8
Massachusetts			
Central City	69	675	10.2
Outside Central City	38	779	4.8
Non-Metro	n.a.	n.a.	n.a.

TABLE III-5

Summary of Revenue Sources for Schenectady and Niskayuna, New York, 1967

	Enroll- ment	ESEA I	Other Fed. Aid.	Total Fed. Aid From All Sources	State Aid	Total Reven
Schenectady	12,480	\$ 28	\$ 32	\$ 60	\$ 454	\$ 106
Niskayuna	4,708	6	78	84	471	117

TABLE III-6

Federal Revenue by Programs for Schenectady and Niskayuna, New York, 1967

Federal Program	Schenectady		Niskayuna	
	Amount	Per Pupil	Amount	Per Pupil
ESEA I	\$ 348,800	\$ 27.94	\$ 26,300	\$ 5.58
ESEA II	24,400	1.95	35,100	7.48
ESEA III			134,500	28.57
Total ESEA	373,200	29.90	195,900	41.61
NDEA III	19,600	1.57	21,700	4.60
NDEA V-A	5,500	0.44	5,200	1.10
Vocational Ed.	50,800	4.07	26,900	5.71
Public Law 874	143,300	11.48	103,100	21.89
School Milk & Lunch	27,500	2.20	28,100	5.96
Other Federal	129,100	10.34	16,005	3.40
Total Federal	749,000	60.01	396,905	84.30

Source: The University of the State of New York. The State Education Department
Bureau of Educational Research. Albany, New York.

TABLE III-7
Central City Proportions of State's Federal Aid
and Enrollment for 25 Largest Cities, 1967*

Cities	Enrollment	NEHA I Eligibles	NEHA I Funds	City Proportion of State's Federal Aid (less Title I)	City Proportion of State's Federal Aid (5 major programs)	Federal Aid (in 1,000's)
California						
Los Angeles	14.6%	20.6%	20.0%	6.7%	11.7%	\$22,909
San Francisco	2.5	4.3	4.4	1.0	2.3	4,474
San Diego	2.8	3.1	3.0	0.8	1.7	3,235
Colorado						
Denver	19.4	29.1	26.0	15.1	18.5	5,079
Georgia						
Atlanta	10.5	6.9	5.7	8.7	7.0	4,375
Illinois						
Chicago	26.5	50.9	33.9	24.1	40.2	34,763
Louisiana						
New Orleans	13.0	11.7	15.0	15.2	15.1	6,775
Maryland						
Baltimore	24.3	50.8	49.7	21.6	38.3	9,357
Massachusetts						
Boston	8.7	26.1	24.6	4.5	14.6	4,928
Michigan						
Detroit	14.8	33.3	35.0	17.3	26.5	16,271
Minnesota						
Minneapolis	8.5	12.6	11.2	11.0	11.1	4,175
Missouri						
St. Louis	13.9	18.9	19.4	12.1	16.1	7,098
New York						
New York	33.3	63.8	61.4	23.2	48.7	60,932
Ruffalo	2.3	4.5	4.3	2.8	3.8	6,543
Ohio						
Cleveland	8.2	14.3	14.7	6.6	10.3	7,818
Cincinnati	3.8	8.3	8.6	4.6	6.4	4,870
Pennsylvania						
Philadelphia	12.7	25.4	24.6	17.8	21.5	19,151
Pittsburgh	7.6	6.9	6.6	12.1	9.1	8,134
Tennessee						
Memphis	14.7	9.3	9.3	5.2	7.6	3,813
Texas						
Houston	10.9	5.2	5.1	4.2	4.7	6,168
Dallas	5.9	3.8	3.7	2.4	3.1	4,035
San Antonio	5.3	4.4	4.3	5.6	4.9	6,463
Washington						
Seattle	13.5	15.7	14.8	13.5	13.9	4,486
Wisconsin						
Milwaukee	13.3	18.4	17.8	13.2	15.4	4,725
Average (unweighted)	12.0	18.7	18.4	10.4	14.7 ^m	

*Excluding District of Columbia

^mNEHA I, II, III, NEHA III, Vocational Education, PL 874

TABLE III-8

Comparison of Federal Aid Per Pupil Received by School Districts
By Income Categories for Major Metropolitan Areas, 1967

School Districts	<u>Los Angeles</u>			<u>New York</u>			<u>Houston</u>			<u>Detroit</u>			<u>Boston</u>		
	range	median	family income	range	median	family income	range	median	family income	range	median	family income	range	median	family income
High	\$12,000 8,600		\$16	\$17,500 10,500		\$19	\$8,900 7,200		\$16	\$14,700 8,700		\$3	\$9,400 9,000		\$29
Moderately High	8,600 7,400		18	10,500 8,000		31	7,200 6,700		21	8,700 7,400		18	9,000 7,300		31
Moderately Low	7,400 6,400		26	8,000 6,500		32	6,300 5,000		19	7,400 6,600		12	7,300 6,300		39
Low	6,400 6,100		54	6,500 5,500		46	5,000 3,700		53	6,600 5,600		55	6,300 5,900		34
Central City	6,896		37	6,091		78	5,902		21	6,069		80	5,747		69

TABLE III-9

Federal Aid by Program for Five School Districts in New York Metropolitan Area, 1967
(average per pupil)

Districts	ESZA I	ESZA II	ESZA III	ESZA III	ESZA III	Federal Program			Lunch- Without Milk	Total ESZA I	Total
						FL 874 V-A	FL 874 V-A	Voc Ed			
High Great Neck (14,451)	4.66	1.26	13.31	.32	.00	.00	.00	.62	3.86	17.57	22.23
Moderately High Huntington (8,988)	22.60	2.40	2.22	1.45	.00	2.22	2.04	2.04	5.86	16.19	38.79
Moderately Low Hicksville (7,908)	1.62	2.33	.00	1.64	.36	3.41	.75	.75	4.07	12.56	14.18
Low Ballport (6,237)	26.44	1.80	1.35	6.36	.70	29.23	.10	.10	5.71	45.25	71.69
New York City (6,092)	67.78	1.78	1.59	1.05	.34	.00	.57	.57	4.99	10.32	78.10

TABLE III-10

Comparison of Federal Aid Per Pupil Received by School Districts
Ranked by Valuation Categories for Major Metropolitan Areas

School Districts	Los Angeles			New York			Houston			Detroit			Boston		
	range A.V.*	federal aid		range A.V.	federal aid		range A.V.	federal aid		range A.V.	federal aid		range A.V.	federal aid	
High	\$ 84700 30300	\$ 19		\$ 77800 52000	\$ 38		\$ 140700 79000	\$ 23		\$ 34700 23000	\$ 40		\$ 56400 36000	\$ 33	
Moderately High	38300 10000	23		52000 23000	33		79000 53500	26		23000 10000	14		36000 22500	41	
Moderately Low	10000 5500	23		23000 14000	30		53500 16500	26		10000 8000	22		22500 18000	30	
Low	5500 4600	27		14000 10500	29		16500 12000	21		8000 5200	16		18000 13500	30	
Central City	16908	37		41141	78		37523	21		16665	80		14021	69	

* Range of State Equalized Valuation

TABLE III-11

Districts with at Least 15% Non-white Students
By Income Quartiles

<u>Districts by Income Category</u>	<u>% Non-white</u>	<u>Total Federal Aid of District</u>	<u>Average Federal Aid of Quartile*</u>
Moderately High			
Greenburgh (\$9,700)	35%	\$13	\$31
New Rochelle (\$8,131)	16	51	31
Moderately Low			
Freeport (\$7,915)	17	49	32
Hempstead (\$7,455)	65	80	32
Mt. Vernon (\$6,873)	39	68	32
Copiasus (\$6,479)	27	33	32
Low			
Bellport (\$6,237)	16	73	46
Central City			
New York City (\$6,091)	40	78	n.a.

*Quartiles taken from Table II-9

TABLE III-12

Revenues From Major Educational Aid Programs for New York State Central Cities, 1965-68
(average per pupil)

	New York	Buffalo	Rochester	Albany		Syracuse	Utica-Rose	Binghamton
				Schenectady	Troy			
1965	\$ 7	\$ 4	\$ 5	\$ 16	\$ 16	\$ 5	\$ 18	\$ 5
1966	31	39	28	49	49	30	68	12
1967	79	79	110	44	44	64	89	32
1968	40	52	99	73	73	75	71	24

TABLE III-13

Comparative Data on the Allocation of ESEA Title I Funds
in New York State, 1966-69

Fiscal Year	Maximum Basic Grant	State Allocation	Pro-ration Factor	Average Net Current Expense	Pro-rated Per Pupil	Total Number of Poverty Eligibles
1966	\$109,667,000	\$109,667,000	1.00	\$366	\$366	299,962
1967	159,451,000	111,091,000	.70	263	276	405,586
1968	195,228,000	115,776,000	.59	417	247	468,529
1969	285,611,000	113,601,000	.43	468	200	567,706

Source: Statement presented by Irving Hatchick, Coordinator of Title I, ESEA,
New York State Education Department to the House Education and Labor
Committee, Washington, D.C. on H.R. 514 on March 6, 1969.

TABLE III-1a

Revenue Sources by States, 1967

State	Total Fed. Aid	% of Total Revenue	State Aid	% of Total Revenue	Local Aid	% of Total Revenue	Total Revenue
California	\$ 40	5.6%	\$ 264	37.0%	\$ 410	57.4%	\$ 714
New York	34	3.4	501	50.4	459	46.2	994
Texas	50	10.0	224	44.8	226	45.2	500
Michigan	22	3.4	277	42.4	354	54.2	654
Massachusetts	39	5.9	123	18.6	501	75.6	663

APPENDIX A

A NOTE ON THE INFORMATION GAP IN EDUCATIONAL FINANCE

Chapter I noted critical gaps in information necessary for the formulation of educational finance policy. On some of the vital questions underlying federal educational policy, e.g., the level of expenditures of individual schools, comparative data of even minimal reliability simply do not exist. But, in regard to most of what we need to know, the reason for the "unavailability" of important information may be traced to two problems. First, data remain scattered among and within major federal agencies like United States Office of Education (USOE), the Office of Economic Opportunity (OEO), the Advisory Commission on Intergovernmental Relations (ACIR), and the Census Bureau, as well as among state and local education agencies and the National Education Association. With current staffing patterns, USOE cannot assemble and integrate materials from these varied sources.

To illustrate: OEO has detailed information on Headstart expenditures, USOE does not; Census and ACIR have valuable information on aspects of state and local finances relevant to the need and capacity for educational support, USOE does not utilize it. Aggregate data on federal expenditures for the nation and for states as a whole are available. But they are not available, either by separate titles or in total, on a district-by-district basis, to say nothing

of separate schools within districts or of individual students. Yet to study the impact of federal aid to education, the researcher or policy maker must have figures more detailed than state-wide information. At present, he must deeply involve himself in the uneven and inconsistent record-keeping systems of the states themselves to obtain these data.

A second major reason for the absence of useful information is the lack of appropriate conceptual frameworks for examining questions of educational finance. The concept "federal aid to education" is currently interpreted by the National Center for Educational Statistics (USOE's major educational statistical bureau) to mean essentially "programs administered by USOE." Educational policy makers, therefore, often receive only the most gross of financial information related to programs like the Neighborhood Youth Corps, Operation Headstart, the Job Corps, and Manpower Development and Training.

Another problem of conceptualization relates to the penchant of schoolmen for isolating educational matters from all other areas of governance. In the world of the policy maker, however, education is but one of an infinite number of claimants for public support, and but one of a variety of services aimed at improving the quality of American life. Education, therefore, must be seen in relation to other factors for effective policy making. For example, financial need for state and federal aid in school districts

is related to the total package of services receiving support from local taxes; yet, collectors of educational data regularly ignore questions of municipal overburden.

The metropolitan context of the market for educational services is widely recognized by social scientists and administrators. Within metropolitan areas competitive salary levels are set and students compete for jobs after graduation. Yet educational statistics neglect the importance of the concept of the SMSA as an interrelated regional area, and continue instead to generate county, state, and national data. Another factor important in establishing national policy is the social and economic nature of communities, but again income, ethnic, and economic data are seldom integrated with educational material.

These varied symptoms of statistical myopia are reflected in some very tangible ways. As independent local governments in most places in the nation, school districts frequently have boundaries that are not coterminous with other governmental jurisdictions. Since most data on taxes, expenditures, income, population, and ethnic composition are collected by general governments (municipalities and counties), they are not applicable directly to school districts. This lack of coterminality has proved a real inconvenience to those seeking to examine education in relation to other governmental activities and to the larger society. Even so, such inconvenience has been overcome by many careful researchers working

with census tracts and school district maps. With a less restricted view of educational relevance, however, such anachronisms long ago could have been eliminated by the nation's education agency. It is commendable that USOE has recently contracted with the Census Bureau for a limited mapping of school district boundaries in relation to general boundaries to overcome the coterminality problem. That USOE is just now facing this problem and with only a small sample is testimony to how far we still must go to provide a data base for educational policy making.

A start has now been made to break out of the inadequate procedures of data collection. Three years ago the National Center for Educational Statistics (NCES) began its Elementary and Secondary General Information Survey (ELSEGIS). A stratified sample of 1,400 school systems, later enlarged to 1,600, was directly surveyed to provide national totals on revenues, expenditures, and attendance.

The Belmont survey of the Bureau of Elementary and Secondary Education, and specifically its Consolidated Program Information Report (CPIR), will provide additional information by districts for program evaluation purposes, and will focus on many variables related to federal programs. That these efforts in their current stage of development can serve only imperfectly as a tool for analyzing major educational policy problems, especially urban problems, is not the point. What is important is that these new approaches are underway, and that they be supported, improved, and expanded.

The immensely valuable report of the USOE Advisory Committee for Educational Finance Statistics (the Kelly Committee), submitted to the U.S. Commissioner in March of 1970, catalogues USOE's information shortcomings in systematic detail. More important, it provides a series of proposals aimed at dramatically upgrading USOE's capability to provide useful material for national educational policy making. A summary of those proposals follows:

1. Organize USOE publications of school finance data around analytical common denominators relevant to significant public policy issues in American education.
2. Combine USOE data with local governmental data from the Census of Governments.
3. Solicit proposals for studies comparing ELSEGIS data with the 1970 census of population and housing when those data are available.
4. Expand ELSEGIS and other USOE survey data to include federal programs not administered by USOE.
5. Expand ELSEGIS sample to include samples within all SMSA's in which the largest 100 central cities are located.
6. Expand ELSEGIS (and Belmont Survey) sample to include all districts with more than, say, 5,000 pupils plus a random sample of school districts under that figure.
7. Collect data at the individual school and administrative unit level on educational programs, student population, personnel,

revenues, expenditures, and outputs for a random sample of schools in big cities.

8. Collect and publish state data on (1) an annual basis and (2) by federal title as well as by federal act.

9. Develop mechanisms to coordinate USOE data collection activities with those of other agencies of the federal government that are in a position to provide USOE with useful data.

However, the recommendations of the Kelly Committee are as yet simply proposals, a blueprint for the future. For the present, the need of policy makers and the interested public for information on the financial impact of federal aid to education remains unmet. This report is intended to satisfy significant aspects of that need by providing systematic baseline data on federal aid and the relationship of that aid to a series of important fiscal, economic, and demographic characteristics of local school districts. The report is also intended to present analytical models that can assist policy makers in evaluating current federal policies as well as in designing more effective programs. In keeping with these purposes, data are assembled which illuminate the financial effects of federal aid for local education agencies, with particular emphasis on those serving the cities and suburbs of metropolitan areas.

Our sample was comprised, as we have seen, of 573 school districts selected on a stratified-random basis from five representative though distinctive states: California, New York, Texas, Michigan and Massachusetts. Researchers assigned to respective state capitals

collected detailed financial data for each school district for the fiscal years 1965 to 1968 inclusive. While central to the study, this approach has two basic limitations. First, the sample data cannot be related readily to the financial data of overlying non-school governments because of the coterminality problem already discussed. Second, the samples contain only a limited number of the nation's largest central city school systems, systems which must be studied because of their large share of total pupil enrollment and, perhaps more importantly, because of all that we know about their threatened situation. In order to transcend these limitations, we have expanded our study to include an analysis of school finances and their relationship to other governmental expenditures in the nation's 37 largest metropolitan areas. The data on which this examination was based were obtained from published and unpublished Census Bureau sources acquired through the cooperative efforts of project researchers and personnel of ACIR.

The result of this combination of sources is a picture of the role of federal aid in the larger framework of local, state, and federal educational finance. On the one hand it is intensive in its focus on particular states, school systems, and metropolitan areas, and on the other hand it is extensive in its consideration of regional and national phenomena. Its analyses include comparisons of metropolitan with non-metropolitan areas, and central cities with suburban districts, and relationships between federal aid and income, race, property valuation, state aid, and locally-raised revenues. Data were examined both statically and over time.

We hope these elements of the study will contribute to closing the information gap in educational finance.

APPENDIX B
A NOTE ON METHODOLOGY

This study of the patterns of federal aid allocation has been conducted using a five-state sample (California, New York, Michigan, Massachusetts, and Texas) containing 573 school districts. This note will explain how and why we chose that sample.

In constructing the sample for this study, the basic choice that had to be made was between a nationally representative, cross-sectional selection of school districts or a sample which was representative of individual states. We decided upon the latter because it was more consistent with the major purposes of our research. Foremost among those were (1) a concern with governmental units that decide aid allocations going to school districts, i.e., states, and (2) an intent to see federal aid in relation to distinctive state-local systems of educational finance. In addition, serious methodological problems plague attempts to create a single national sample of school districts: for example, property valuations are not equalized to take into account the differences in assessment practices among states, and methods for counting enrollments vary from state to state. As a result, we have undertaken our analysis with a sample composed of separate subsamples of school districts in five states.

Selection of States

In selecting the five states to be studied, we sought a

group of states that would be broadly representative of the dominant trends in educational finance, particularly of the trends which affect metropolitan areas where more than two-thirds of the nation currently reside. The states from which our school system sample was drawn contain 31 percent of the nation's total population and of its public school enrollment through grade 12, and 39 percent of the country's metropolitan population and of its metropolitan public school enrollments through grade 12. In short, with a sample selected from only five states we encompass a substantial proportion of the nation's school population. Our selection was based on more than their sizable population. Specifically our criteria were: (1) region, (2) degree of urbanism, (3) social and economic characteristics, (4) arrangements for financing elementary and secondary education, and (5) patterns of school district organization.

Region

The choice of states provides substantial regional representativeness that includes the northeastern, north central, southern, and western states. All the examined states are within a different census regional division: California within the Pacific, New York the Middle Atlantic, Texas the West South Central, Michigan in the East North Central, and Massachusetts New England.

Degree of Urbanism

Each of the states whose school systems we studied exceeds

the other members of their respective census regional divisions in the proportion of their population classified as metropolitan. This skewing of the sample was adopted in order to provide a vehicle for understanding the relationship between federal aid and the nation's metropolitan trends. In selecting our samples within those states, however, we did include sufficient districts in all states except Massachusetts to permit us to make statements about the rural areas as well.

Social and Economic Characteristics

In regard to social and economic characteristics, the five states of our study differ considerably with respect to one another, but are representative of their respective regions.

Comparing the 1968 household incomes, we find that Texas, with \$8,618 falls below the national average of \$9,592, while all the others rank above. Michigan, with \$10,899 is the most affluent; followed by New York, \$10,662; Massachusetts, \$10,545; and California \$10,180. These average household incomes are significantly closer than those of any other state to the average income within their regional divisions.

The five states, though different in terms of household income, vary markedly in terms of the proportion of their black population. Massachusetts has 2.2 percent, California 5.6 percent, New York 8.4 percent, Michigan 9.2 percent, Texas 10.5 percent. These proportions deviate little from the appropriate regional division averages, except in the case of Texas which has a

considerably lower proportion of black population than do other states in its region. However, the inclusion of Texas permits us to include urban school systems that contain large populations of Chicano children. Concentrated in the southwest, these school systems are among the poorest in the nation and therefore must not be ignored.

The sample states also differ widely in population density. With 657 persons per square mile, Massachusetts ranks as one of the three most densely settled states in the nation. Conversely, Texas with only 36 persons per square mile rates as one of the most sparsely inhabited. Population densities of the other three states are New York 351, Michigan 138, and California 100. As with other characteristics, the densities figures for the sample states are similar to those of their respective regional divisions.

Arrangements for Financing Education

One of the key elements in understanding systems of educational finance, is the relative distribution of revenue responsibilities between the school district and the state government. Nationally, local governments raise approximately 52 percent of all revenues, the states 41 percent, and the federal government approximately 7 percent. Behind those national averages, however, is a wide range of diverse revenue responsibility. The states in our study reflect that diversity. In regard to the percent of revenues raised by local jurisdictions, Table III-14 (pp.66) shows that the states in our sample accurately reflect national diversity.

ranging from Massachusetts where 76 percent of revenues was raised locally to Texas where 45 percent was locally raised. State aid ranged from a low of 19 percent of total revenues in Massachusetts to a high of 50 percent in New York. In regard to federal aid, the states in the sample ranged from 3.4 percent to 10 percent. These states except Texas fell below the national average of better than 7 percent. In dollar amounts, our states varied from being among the highest in the nation to being somewhat below the average. Again our states appeared highly representative of the other states in their regional division.

Variety in state support programs was also evident. Massachusetts, Michigan, and New York, possess aid programs in which at least 80 percent of all grants is apportioned on an equalizing basis, i.e. in inverse relation to the relative fiscal ability of local school systems. In Texas slightly less than 60 percent of total aid is estimated to be equalizing, and in California, a flat grant state, it is only 33 percent. These figures, of course, do not begin to describe all the features and nuances of the various state aid systems, but they do give some idea of the strong differences which exist.

School District Organization

There is considerable variety in our sample with regard to the patterns of school district organization. All our states except Michigan possess some dependent school systems, and in Massachusetts, as in the other New England states, virtually every school system is a subdivision of a town-wide general purpose government.

California introduces a distinctive pattern. Entire school systems can be comprised of elementary grades or secondary grades or both. This arrangement complicates problems of studying educational finance, since there are considerable cost differentials in education of elementary and secondary school pupils; comparisons between districts with different grade levels of educational responsibilities must obviously be avoided.

In New York, Michigan, and Texas, a more typical pattern of school district organization exists. Common to them, as well as to the other states in the sample, a geographic pattern of district organization insures that there will be extensive social, economic, and fiscal disparities among districts in metropolitan areas. Effectively gerrymandered boundaries in all states permit privileged communities like Great Neck, Bloomfield Hills, and Alamo Heights to spend large sums on children with few educational problems while neighboring districts are able to spend relatively small amounts on students with fundamental impediments to learning.

Selection of School Districts

The process for selecting the districts within our sample was based upon the techniques of sample selection used in the USOE Elementary and Secondary General Information Survey. (Like the ELSEGIS sample, ours was chosen on a stratified, variable proportion random selection basis from the 1966-1967 Education Directory of the U. S. Department of Health, Education and Welfare.) The first step in constructing the sample was to establish for each of the five states the number of school systems falling within the following

size cohorts: (1) 25,000 and over; (2) 10,000 - 24,999; (3) 5,000-9,999; (4) 2,500 - 4,999 and (5) 300 - 2,499. School systems with less than 300 enrolled students were excluded entirely because they are located predominantly in two or three rural midwestern states.

The second step in establishing the representative cross section was to decide upon the proportion of school systems to be selected randomly from each enrollment cohort. The ratio settled upon was as follows: 1 to 1 for all school systems with 25,000 and over; 1 to 1 for all school systems with 10,000 to 24,999; 1 to 2.5 for all school systems 5,000 to 9,999; 1 to 4.5 for all school systems with 2,500 to 4,999 and 1 to 17.5 for all school systems with 300 - 2,500 pupil population. These proportions were increased considerably from those used in the ELSEGIS project in order to give emphasis to the large school systems generally found in major metropolitan communities.

To select the districts for each cohort, a table of random digits was employed and the appropriate number of sample systems was selected. The result of this process was to give us a high proportion of school districts within metropolitan areas: 85 percent in California, 72 percent in Massachusetts, 71 percent in New York, 65 percent in Michigan, 58 percent in Texas. In terms of the number of school systems, the sample contains 15 percent of the total in California, 14 percent in Massachusetts, 13 percent in New York, 10 percent in Michigan, and 9 percent in Texas. Because of its metropolitan school system orientation, however, this sample

represents 71 percent of the fall 1966 enrollment in California, 62 percent in Texas, 60 percent in New York, 52 percent in Michigan, and 45 percent in Massachusetts.

Collection of Data

Fiscal data was collected for each of the sample districts. Research assistants spent from three to six weeks in state capitals examining a variety of official sources that reported school district revenues and expenditures. In several cases we obtained copies of the state's own computer tape. In others data were copied from official publications. More than fifty categories of financial data were obtained for the 1965-1968 fiscal years (see Exhibit B-1).

Social and economic data were later assembled for each district. Since such data are collected on the basis of general government jurisdiction and census tracts, developing accurate data for school districts required that researchers overcome problems of noncoterminality by comparing school district maps with census tracts where possible and by assigning social and fiscal data to school districts on the basis of standardized assignment formulas where tracted maps were not available. A list of the social, economic, and fiscal variables follows.

The data for the five states in our study will be made available in two forms to researchers, public officials, and others interested in educational finance: (1) a 200 page statistical workbook containing summary comparative tables and (2) computer tapes for each of the five states. Only a minimal charge will be made. Please direct requests to Federal Aid Project, Policy Institute, 723 University Avenue, Syracuse, New York.

Phase I Fiscal Data Collection Instrument

The following data has been collected on each of the school districts in the project sample for the 1965, 1966, 1967 and 1968 fiscal years.

CARD NO. ECLS. 8-91 01									
IDENTIFICATION	DISTRICT NAME	BALANCES ON HAND BEGINNING OF YEAR			REVENUE FROM LOCAL SOURCES			TOTAL REVENUE FROM LOCAL SOURCES	
		BUDGETARY FOR CURRENT OPERATIONS	BUDGETARY INTEREST & RESERVATION	TOTAL RESERVES OF YEAR BALANCES	TAXATION & APPROPRIA- TIONS	1968 & TRANSFERS FROM PAYMENTS	OTHER LOCAL REVENUE		

CARD NO. ECLS. 8-91 02									
IDENTIFICATION	DISTRICT NAME	REVENUE FROM INTERMEDIATE SOURCES	REVENUE FROM STATE SOURCES	REVENUE FROM FEDERAL SOURCES, BY PROGRAM					PUBLIC LAW 919
				ES&A TITLE 1	ES&A TITLE 2	ES&A TITLE 3	ES&A TITLE 4	ES&A TITLE 5-6	

CARD NO. ECLS. 8-91 03									
IDENTIFICATION	DISTRICT NAME	PUBLIC LAW 974	HEAD START	REVENUE FROM FEDERAL SOURCES, BY PROGRAM (cont.)					TOTAL NON-GOVERN- MENTAL RECAPITAL
				FOLLOW- THROUGH	VOCATIONAL EDUCATION	NAT'L SCHOL- ARSHIP (EACH DAY)	ALL OTHER REVENUE FROM FEDERAL SOURCES	TOTAL REVENUE FROM FEDERAL SOURCES	

CARD NO. ECLS. 8-91 04									
IDENTIFICATION	DISTRICT NAME	INCOME TRANSFERS	CURRENT EXPENDITURES, SCHOOL YEAR 1964-1965					OTHER INSTRUCTION- AL EXPENSES	TOTAL EXPENDITURE FOR INSTRUCT
			TOT OF ALL BALANCES REVENUE & TRANSFERS	ADMINIS- TRATION	SALARIES OF PROFESSIONAL STAFF	SALARIES OF NON-PROF STAFF	TOTAL SALARIES FOR INSTRUCT		

CARD NO. ECLS. 8-91 05									
IDENTIFICATION	DISTRICT NAME	ATTENDANCE SERVICES	HEALTH SERVICES	CURRENT EXPENDITURES, SCHOOL YEAR 1964-1965 (cont.)				TOT ALLO- WABLE TO PUPIL EXPENDITURE	FOOD SERVICES
				PUPIL TRANSPORTATION	OPERATION OF PLANT	MAINTENANCE OF PLANT	FIXED CHARGES		

CARD NO. ECLS. 8-91 06									
IDENTIFICATION	DISTRICT NAME	CUR EXPENSES, SCH-YR, 1965-6, (cont.)			CAPITAL OUTLAY			DEBT SERV FROM CUR FUNDS	
		STUDENT BODY ACTIVITIES	COMM SVCS, SCH SCHOOLS, ADULT EDU, & JR COLS	TOTAL CURRENT EXPENDITURE	SITES, NEW BLDGS, ADDITIONS, & IMPROVMTS	NEW EQUIPMENT	TOTAL CAPITAL OUTLAY	PRINCIPAL OF DEBT	INTEREST ON DEBT

CARD NO. ECLS. 8-91 07									
IDENTIFICATION	DISTRICT NAME	DEBT SERVICE FROM CURRENT FUNDS (cont.)					TOTAL EXPENSES FOR DEBT SERVICES FROM CURRENT FUNDS	TOTAL EXPENDITURE OUTSIDE TRANSFERS	
		AMOUNT PAID INTO SINKING FUND	PRINCIPAL OF EXPENSES TO SCH HOUSING AUTHORITY	INTEREST ON EXPENSES TO SCH HOUSING AUTHORITY	OTHER DEBT SERVICES	DEBT SERV FROM CUR FUNDS			

CARD NO. ECLS. 8-91 08									
IDENTIFICATION	DISTRICT NAME	ATTENDANCE, SCH-YR 65-6							
		AVERAGE DAILY ATTENDANCE	AVERAGE DAILY MEMBERSHIP						

Social and Economic Data Available for All
School Districts in the Study

1960 nonworker-worker ratio*

1960 percentage of median family income under \$3000*

1960 percentage of median family income over \$10,000*

1960 percentage of population non-white*

1960 median family income*

1965 pupils per square mile of school district**

1965 state equalized full valuation per pupil**

State equalized tax rate expressed in mills**

1967 percentage non-white high school enrollments***

* Source: Bureau of the Census

** Source: Computed from appropriate state sources

*** Source: National Center for Educational Statistics,
Directory

FOREWORD

One of the chief problems confronting public education today is the need for more equitable distribution of financial resources. Not only must we find new ways to finance public education, we must also explore ways to use existing funds more wisely and assure that educational resources are distributed equitably and on the basis of educational needs.

"The Financial Aspects of Equality of Educational Opportunity" is a report presented to the Select Committee on Equal Educational Opportunity. The report summarizes present inequities in school finance, reviews the causes of these inequities and recent court decisions and concludes with a series of recommendations. The Select Committee is indebted to Joel S. Berke and James A. Kelly for their work on the committee's behalf. This print also includes a report by Joel S. Berke and John J. Callahan, "Inequities in School Finance," which examines the impact of recent school finance decisions and proposed revenue sharing programs, with particular attention to the problems of large urban school districts. These studies are submitted herewith because they have important implications for the future of public elementary and secondary education.

WALTER F. MONDALE,

Chairman, Select Committee on Equal Educational Opportunity.

THE FINANCIAL ASPECTS OF EQUALITY OF EDUCATIONAL OPPORTUNITY

A Report Presented to the
SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY
WALTER F. MONDALE, CHAIRMAN

by

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PREFACE

The authors wish to express their gratitude to those who assisted in the preparation of this report, Anthony Carnevale, Barrie Goldstein, and Ron White, research assistants at the Policy Institute of the Syracuse University Research Corporation, and Robert Firestone of the Urban Studies Program of the University of Florida at Gainesville.

The committee staff and its chairman have provided intelligent and thoughtful questions which have, we believe, improved the quality of this document.

All interpretations, recommendations, and errors of fact, however, are the sole responsibility of the authors.

J.S.B.
J.A.K.

December, 1971

Chapter I

INTRODUCTION

The elements of American educational finance are becoming increasingly familiar to those who are concerned about the condition of the public schools of the Nation. Yet the fact that those familiar financial arrangements are the cause of widespread and systematic denials of equal educational opportunity is largely unappreciated. In fact, the ways in which we raise and spend money for education guarantees that children who come from the most wealthy and prestigious communities will ordinarily be provided the best education that the public schools can offer, while those who begin life with the disadvantages of impoverished family and neighborhood backgrounds will generally be relegated to second-class schools.

In all the States except Hawaii, public elementary and secondary education is financed by a combination of local, State, and Federal resources. Local funds, derived from the real property tax, provide better than half the revenue for elementary and secondary education for the Nation as a whole. State aid, officially designed to assure a minimum statewide level of services and to offset local variations in taxable wealth, provides more than 40 percent of total public school funding. The national government, the junior partner in educational federalism, furnishes the remaining 7 percent of school revenues through a series of categorical programs intended to serve particular educational purposes.

This report will discuss this partnership for financing public elementary and secondary education and will analyze the ways in which that system contributes to educational inequities. We have divided this study into five major sections:

1. As a means of providing clarity in an area often characterized by vagueness, we define our understanding of equal educational opportunity.
2. We describe the patterns of fiscal disparities that exist among and within school districts.
3. We discuss the reasons for these disparities, examining the role of local, State, and Federal programs.
4. We turn to the courts, and analyze the impact of *Serrano* versus *Priest* and *Van Dusartz* versus *Hatfield*—recent cases that have declared systems of school finance unconstitutional in California and Minnesota.
5. We will advance several suggestions for moving toward more equitable patterns of school finance.

Chapter II

UNDERSTANDING EQUALITY OF EDUCATIONAL OPPORTUNITY

Like democracy and justice, equality of educational opportunity has almost as many definitions as it does definers. Rather than simply adding our own preferences to those of our many predecessors, we would like to assist the committee to sort out the central themes in the differing approaches.

As a start, we would suggest two major distinctions. In the first category are those conceptions which emphasize equity in the distribution of educational *services and their outcomes*, educational achievement. The second major perspective sees equality in education primarily in terms of how the *costs* of education are distributed. Most conceptions of equality of educational opportunity suffer because they fail to concern themselves with both sides of the problem, equity in the distribution of education as well as equity in bearing their costs.

EQUAL EDUCATIONAL OPPORTUNITY AS EQUITY IN EDUCATIONAL SERVICES AND ACHIEVEMENT

ABSOLUTE EQUALITY IN SERVICES

We begin with what is probably—in our eyes unfortunately so—the most widely prevailing concept of equality of educational opportunity, absolute equality or identity in the level of educational services accorded all children. Such a view frequently measures the level of services in terms of equal per-pupil-expenditures or equal expenditures adjusted for cost differentials; or else by some crude index of the quality of education, such as equal pupil-teacher ratios or the like. This view of the requirements of equal opportunity in education is frequently voiced by those who have been so impressed and distressed by the marked disparities in school services that they turn to its converse, absolute equality, as a ready remedy. Besides stressing its simplicity, those who favor this test also suggest it as a useful minimum step in moving toward full educational equality because it would serve as an immense advance over the current system which regularly works to the disadvantage of the poor and the minorities.

It is our view, however, that this is a case where “the better” is the enemy of “the best,” and that acceptance of a definition of equal opportunity in terms of equal expenditures or services for all children is in opposition to what we know about the differential learning aptitudes of children; or, what we take to be a dominant goal of Ameri-

can education, that is furthering social mobility. To be meaningful, we would suggest, a theory of equal educational opportunity must take into account both:

1. The purposes of education; and,
2. What little we know about how children from different backgrounds and with differing abilities learn.

SERVICES RELATED TO EDUCATIONAL NEED

A primary function of public education in America has been its role as a vehicle for social mobility. The goal has been to equip children of moderate means and meager status with the skills needed to compete on equal terms, in the search for a good life, with children of higher station and greater wealth. While, as a personal matter, education may well be seen as an end in itself; as a public service education is a means to a number of civic and economic ends—chief among them being equal opportunity in the competition of life. Equal *educational* opportunity should be intended to serve that larger goal; and, as our society has come to place increasing emphasis on credentials, degrees, and technical training, the role of education has become even more important in determining life chances. Meaningful equal educational opportunity, therefore, must equip children from any background to compete on equal terms with children from any other level of society.

The implications for public policy that spring from this understanding of the goal of equal educational opportunity are clear: More services must be focused on those with disadvantages in their ability to succeed in school; so, that when their basic education is completed, children from differing racial and economic groups—as nearly as possible—stand on an equal footing in terms of educational attainment with children who began school with greater advantages. Individual differences in achievement there must always be, but equal educational opportunity requires that educational resources should be distributed to offset societal and inherited impediments to success in life. In short, equal educational opportunity means that services—and thus, expenditures—should be related to educational need as defined above.

Neither of the authors of this testimony would minimize the practical difficulties in implementing this view of equal educational opportunity. We are both aware of the questionable results of previous large-scale efforts at compensatory education like Title I of ESEA, and some of the large local programs like New York's More Effective Schools. We know that educating the children of the poor and of racial minorities is one of the things American schools do worst. We are not unaware either of the evidence of the apparent impotence of schooling in comparison with out-of-school influences on children. And, we have both had the opportunity, in previous research, of developing techniques for identifying educational need—both on the basis of admittedly imperfect achievement tests, and on the basis of social and economic indexes of need. Yet with all the problems associated with it, allocating resources in proportion to educational need seems an indispensable part of a meaningful public policy designed to further equality of educational opportunity. We shall use this view as

one of the tests by which we shall subsequently measure the degree of inequity in the financing of education in the United States.

EQUAL EDUCATIONAL OPPORTUNITY AS EQUALITY IN BEARING THE COSTS

How the costs of education are distributed is another important theme in discussions of equality of educational opportunity. Indeed, much of the court's concern in *Serrano* versus *Priest* was directed to that question. Their findings—that poor communities which taxed themselves at higher rates were frequently unable to support educational services at as high a level as richer communities taxing themselves at lower rates—weighed heavily in the court's decision to find that system in violation of the equal protection clause of the Fourteenth Amendment.

EQUAL SERVICES FOR EQUAL TAX EFFORT

One possible outcome of the *Serrano* decision would be a system arranged so that communities making equal tax effort receive equal educational services. Perhaps the most persuasive spokesmen for this view are the two authors of the influential amicus brief in the California case, John Coons and Stephen Sugarman—who are also the authors of an important new book on educational finance.* They argue that the right of local school districts to opt for different levels of educational offerings should be maintained, but that each community should have an equal opportunity to select any given level of educational expenditure. State aid would make up the difference between the yield of millage levels in districts with differing tax bases. Thus the State would guarantee that equal tax effort would produce equal education. The principle of power equalizing, as they call it, could theoretically be extended to the family level as well as to the school district—but the principle remains the same. In either case, the test of equity is the power of equal tax effort to purchase equal services. It is consistent, it would seem, with one of the familiar principles for judging the fairness of a revenue system—payments in proportion to benefits received.

TAXATION IN PROPORTION TO ABILITY TO PAY

While benefits in accordance with payments is one possible definition of equity, a criterion that seems far more in keeping with modern democratic ethics is taxation proportional to one's—or a school district's—ability to pay. This criterion of equity underlies the graduated income tax, for example, and would be approximated by systems of State or Federal aid for education which used a sophisticated measure of community wealth as the criterion for school aid allocations. Patently, for many school systems the amount of taxable property per pupil is an inadequate measure of their ability to pay. Income may be more realistic, or a combination of the two. In addition, a measure that takes account of the greater demands of a wider variety of public

*John E. Coons, William H. Clune III, and Stephen D. Sugarman. *Private Wealth, and Public Education*. Cambridge: The Belknap Press of Harvard University, 1970.

services necessary in urban areas should also be used. Measuring effort by the total tax rate—municipal and educational tax rates—is one way of doing that.

In establishing a definition for equality of educational opportunity, the way in which costs of education are distributed is an important component to be considered. Our preference in developing such a definition is for a system which distributes the costs of education in proportion to a realistic measure of a community's or the individual's ability to pay. For educational finance, the adoption of this goal would call for new approaches to equalization in most States of the Nation.

SUMMARY

In short, in both the distribution of services and in the methods for supporting these services a number of definitions of equality of educational opportunity are available. While we have expressed our preferences among these competing criteria, what is probably most important for this committee to note is: That regardless of which of these tests of equity one wishes to apply, the current system of financing public education in the United States fails to qualify. *In short, there is no recognized test of equal educational opportunity which our current system of education finance is able to meet.* In the next section of our testimony, we present examples of the evidence from which we draw that conclusion.

CHAPTER III

THE PROBLEM: INEQUITIES IN SCHOOL FINANCE

THE MAGNITUDE OF EDUCATIONAL REVENUES AND EXPENDITURES

The magnitude of the American public educational enterprise is breathtaking. Designed to educate all children through age 16 and most well beyond that point, public schools enrolled 47,238,087 students in 1969-70 and spent \$39.5 billion. Almost 50 million Americans were thus involved on a full-time basis in public education—more persons than are found in any other segment of American life.

Total expenditures for public education in America have risen dramatically in the past half century and particularly during the decade of the 1960's. Between 1960 and 1970 total expenditures increased by 153 percent from \$15.6 billion to \$39.5 billion. During the same period enrollment increased from 36.1 million to 47.2 million, or just 30 percent.

Expenditures for public education have risen more rapidly than general indexes of the Nation's wealth. Public school spending absorbed 2.3 percent of the gross national product (GNP) in 1949; but, by 1967 schools spent 4 percent of GNP. During those 18 years GNP increased at an average annual rate of 6.4 percent while school expenditures rose at an annual rate of 9.8 percent.

These figures, of course, include only the direct costs of public elementary and secondary education. While they will not enter our analysis, other nonpublic and indirect costs add significantly to educational expenditures broadly understood. Nonpublic schools enroll better than 10 percent of the Nation's schoolchildren; on-the-job training programs in industry, government, and the Army educate millions more. Perhaps the largest single indirect cost of public education—a cost frequently ignored by writers in the school finance field—is the earnings forgone by students who attend school rather than obtain employment. Forgone earnings of students, aged 16-and-above, were estimated at between \$20 and \$30 billion in 1967, assuming that approximately 75 percent of them could have been employed if they so desired.

Despite these massive expenditures, however, we face a fiscal crisis in education. Increases in class size, elimination of experimental programs, and early closings are but the most dramatic manifestations of what happens when educational revenues do not keep up with costs. Yet despite the serious plight of many school systems, the greatest financial crisis is not the overall inadequacy of public spending for

education. The real crisis is a crisis in equity, not adequacy, for if substantially more funds were suddenly forthcoming tomorrow, under present patterns of allocation inequality of educational opportunity would be as great then as it is today.

VARIATIONS IN SCHOOL SPENDING

Variations in expenditures across the Nation are spectacular. A careful study some years ago found variations of classroom expenditures for the entire country of nearly 4-to-1 after the obviously unrepresentative districts had been eliminated.

TABLE I.—*Current expenditures per classroom in 1960*

	<i>Selected items</i>	<i>Amount</i>
Classroom expenditure level:		
High	-----	\$25,237
At the 98th percentile	-----	13,177
At the 90th percentile	-----	11,063
At the 75th percentile	-----	9,697
Median for United States	-----	7,528
At the 25th percentile	-----	5,708
At the 10th percentile	-----	4,365
At the 2d percentile	-----	3,410
Low	-----	1,495

SOURCE: Profits in School Support, U.S. Government Printing Office, p. 4
Forrest W. Harrison and Eugene P. McLoone.

Within individual States, high spending districts outspent their low spending neighbors by better than two to one. A quick check of current data on high and low expenditure per pupil districts collected for 1969-70 showed even higher ratios; but, the two studies are non-comparable in their techniques and do not necessarily suggest a trend toward greater disparities. (See Table II.)

TABLE II.—*Intrastate disparities in per pupil expenditures 1969-70*

	High	Low	High/low index
Alabama	\$581	\$344	1.7
Alaska Revenue/pupils	1,810	480	3.8
Arizona	2,223	436	5.1
Arkansas	664	343	1.9
California	2,414	569	4.2
Colorado	2,801	444	6.3
Connecticut	1,311	499	2.6
Delaware	1,081	633	1.7
District of Columbia	-----	-----	-----
Florida	1,036	593	1.7
Georgia	736	365	2.0
Hawaii	-----	-----	-----
Idaho	1,763	474	3.7
Illinois	2,295	391	5.9
Indiana	965	447	2.1
Iowa	1,167	592	2.0
Kansas	1,831	454	4.0
Kentucky	885	358	2.5

TABLE II.—*Interstate disparities in per pupil expenditures*
1969-70—Continued

	High	Low	High/low index
Louisiana.....	892	499	1.8
Maine.....	1,555	229	6.8
Maryland.....	1,037	635	1.6
Massachusetts.....	1,281	515	2.5
Michigan.....	1,364	491	2.8
Minnesota.....	903	370	2.4
Mississippi.....	825	283	3.0
Missouri.....	1,699	213	8.0
Montana average of groups.....	1,716	539	3.2
Nebraska average of groups.....	1,175	623	1.9
Nevada.....	1,679	746	2.3
New Hampshire.....	1,191	311	3.8
New Jersey 1968-69.....	1,485	400	3.7
New Mexico.....	1,183	477	2.5
New York.....	1,889	669	2.8
North Carolina.....	733	467	1.4
North Dakota county averages.....	1,623	686	2.3
Ohio.....	1,685	413	4.0
Oklahoma.....	2,566	342	7.5
Oregon.....	1,432	399	3.5
Pennsylvania.....	1,401	484	2.9
Rhode Island.....	1,206	531	2.3
South Carolina.....	610	397	1.5
South Dakota.....	1,741	350	5.0
Tennessee.....	700	315	2.4
Texas.....	5,334	264	20.2
Utah.....	1,515	533	2.3
Vermont.....	1,517	357	4.2
Virginia.....	1,126	441	2.6
Washington.....	3,406	434	7.8
West Virginia.....	722	502	1.4
Wisconsin.....	1,432	344	4.2
Wyoming.....	14,554	618	23.6

NOTES

For New Jersey data are for fiscal year 1969 since fiscal year 1970 data were not yet available.

For Alaska data represent revenue per pupil.

For Montana and Nebraska data are high and low of average for districts grouped by size.

For North Dakota data are averages of expenditures of all districts within a county.

Data are not fully comparable between States since they are based entirely on what data the individual State included in their expenditures-per-pupil analysis

Source: State Reports and Verbal contacts with State Officials.

CENTRAL CITY—SUBURBAN DISPARITIES

One of the major inequities in educational finance is that variations in expenditures often tend to be inversely related to educational need. The following teacher and expenditure data contrasts conditions in

central cities with surrounding high prestige suburbs. (See Table III.)

TABLE III.—*Comparison of pupil/teacher ratio in selected central cities and suburbs, 1967*¹

City and suburb	Pupil/teacher ratio	Per pupil expenditures
Los Angeles.....	27	\$601
Beverly Hills.....	17	1, 192
San Francisco.....	26	693
Palo Alto.....	21	984
Chicago.....	28	571
Evanston.....	18	757
Detroit.....	31	530
Grosse Pointe.....	22	713
St. Louis.....	30	525
University City.....	22	747
New York City.....	20	854
Great Neck.....	16	1, 391
Cleveland.....	28	559
Cleveland Heights.....	22	703
Philadelphia.....	27	617
Lower Merion.....	20	733

¹ Taken from: The Urban Education Task Force Report (Wilson C. Riles, chairman), New York, N.Y.: Praeger Publishers, Inc., 1970.

Source: Gerald Kahn and Warren A. Hughes, *Statistics of Local Public School Systems*, 1967, National Center for Educational Statistics, U.S. Office of Education.

Note that in every case, city students had less money spent on their education and higher pupil/teacher ratios to contend with than did their high-income counterparts in the favored schools of suburbia. In a recent study of five large industrialized States, it was found that in four of the five States, central cities averaged nearly \$100 less per pupil in total expenditures than did the suburban districts.*

The real inequity, however, lies not in the fact that cities often spend less per pupil than their suburbs for education. Even if urban expenditures were the equal of suburban expenditures or exceeded them slightly, as is the case in some sections of the Nation, the denial of equal educational opportunity would persist. For the cost of providing educational services in large central cities is far more than it is in the suburban ring. As a result, when cities spend the same or slightly more than their neighbors, they are getting far less in proportion to their educational need. The reasons are these: First, the cost of things schools must purchase are higher in large cities; and, second, the cities have far higher proportions of educationally disadvantaged pupils who need more concentrated and expensive programs if they are to

*Joel S. Berke, Stephen K. Bailey, Alan K. Campbell, Seymour Sacks; *Federal Aid to Public Education: Who Benefits?* U.S. Senate Select Committee on Equal Educational Opportunity committee print, Government Printing Office, April 1971.

achieve at average grade levels. If equal opportunity in education implies that resources should be allocated in proportion to educational need, the cities with their higher proportions of the poor, the physically and mentally handicapped, the foreign born, and the victims of racial discrimination lag far behind their rightful level of educational services.

Data on a representative sample of New York State school districts makes these points rather starkly. Grouped by property wealth categories, city school districts and noncity districts are contrasted in regard to their education tax rates; their tax rates for all municipal functions; their State aid for education; their total expenditures per pupil; and lastly, by two measures of educational need—the percentage of the school district's pupils scoring two grade levels or more below the norm, and the percentage of pupils from families receiving welfare payments under the Aid to Families with Dependent Children program.

TABLE IV.—Selected data for 119 New York State school districts, city and noncity, within wealth groups

Full taxable property value per pupil ¹ (city-noncity)	School tax rate		Total tax rate		Total State aid		Total expendi- tures per pupil		Percent of pupils 2 or more grade levels below the norm		Percent of pupils from families receiving AFDC	
	Non- city	City	Non- city	City	Non- city	City	Non- city	City	Non- city	City	Non- city	City
\$48,000 and above:												
Noncity (N=8).....	\$16.78	\$11.84	\$34.18	\$37.15	\$315.25	\$351.0	\$1,320	\$1,187	17.7	34.0	5.6	15.0
City (N=1).....												
\$45,938—\$3,634:												
Noncity (N=8).....	19.53	16.23	34.73	45.57	383.37	356.25	1,203	1,146	15.0	31.5	4.5	17.3
City (N=4).....												
\$35,396—\$24,150:												
Noncity (N=29).....	19.42	16.43	33.81	37.80	475.72	463.44	1,088	1,011	14.7	27.8	2.3	12.7
City (N=9).....												
\$23,610—\$12,190:												
Noncity (N=49).....	18.57	15.91	35.92	41.41	629.24	566.85	998	972	17.5	22.3	3.8	8.6
City (N=7).....												
\$11,741 and below:												
Noncity (N=5).....	14.96		43.21		619.0		1,014		18.4		3.0	
City (N=0).....												

¹ In weighted average daily attendance.

Source: Joel S. Berke, Robert J. Goettel, Ralph W. Andrew. Local, State, and Federal Policy." Education and Urban Affairs, "Equity in Financing New York City's Schools: The Impact of vol. IV, No. 2., February 1972 (forthcoming).

The results are clear. Cities have somewhat lower education tax rates, but consistently higher tax rates for all functions. Their State aid is slightly less than it is for comparable noncity areas, and their expenditures for education lag even more. What is more significant, however, is that these somewhat lower expenditures must serve a student population which the last two columns demonstrate consists of twice to three times the proportion that noncity areas have of students who are educationally disadvantaged by either an achievement—third grade reading ability—or an income—AFDC qualification—measure.

DIRECT CORRELATIONS BETWEEN COMMUNITY WEALTH AND SCHOOL SPENDING

Inequities do not arise simply because of contrasts between the fiscal and educational characteristics of city, suburban, and rural jurisdictions. Even within suburban portions of metropolitan areas there is a clear pattern of higher quality education in districts with higher economic status, and there is considerable variation in the economic standing of suburban school districts. For example, correlations between rank in property valuation and rank in per pupil revenues is virtually perfect in Table V despite the existence of State aid systems which are nominally equalizing. (See Table V.)

Table VI ranks the same school districts from Table V on the basis of their median family income. Again we find a general pattern of higher school revenues the further up in the income scale of communities one goes, although the relationship is somewhat less clear than it is in Table V. Yet in each of the five metropolitan areas the highest income school districts spend more per pupil for education than did the lowest. In short, "them as has, gits" when it comes to the distribution of school resources in the five metropolitan areas of Boston, Los Angeles, New York, Houston, and Detroit.

These patterns and examples are not isolated instances. They are duplicated in countless studies and through the official reports of virtually every State in the land. Quite simply, they are typical examples of the fiscal roots of inequality in educational opportunity that characterize the distribution of the benefits and burdens of American public education.

TABLE V.—Per pupil suburban property value and school revenues in the suburbs and 5 metropolitan areas, 1967

Property valuation category	Boston suburbs		Los Angeles suburbs		New York suburbs		Houston suburbs		Detroit suburbs	
	Valuation	Revenue	Valuation	Revenue	Valuation	Revenue	Valuation	Revenue	Valuation	Revenue
High.....	(3)\$44,767	\$824	(3)\$57,414	\$958	(5)\$60,842	\$1,411	(1)\$140,719	\$928	(4)\$27,138	\$899
Moderately high.....	(11)26,343	780	(16)17,176	686	(16)31,384	1,172	(5)64,356	571	(12)14,750	724
Moderately low.....	(9)20,554	760	(16)7,195	630	(17)18,413	1,043	(4)27,146	466	(11)9,282	629
Low.....	(5)15,431	595	(3)5,079	663	(3)10,997	1,009	(2)12,494	482	(4)6,550	599

NOTE.—Figures in parentheses represent number of school systems. Source: The Policy Institute of the Syracuse University Research Corp.

TABLE VI.—*Suburban income and school revenues in 5 metropolitan areas—1967*

Income category	Boston suburbs			Los Angeles suburbs			New York suburbs		
	Num- ber ¹	Income range	Per pupil revenue	Num- ber	Income range	Per pupil revenue	Num- ber	Income range	Per pupil revenue
High-----	3	\$9,000-9,363	\$860	2	\$8,600-11,977	\$1,071	5	\$10,500-14,459	\$1,455
Moderately high-----	8	7,300-8,900	784	17	7,400-8,600	682	13	8,000-10,000	1,172
Moderately low-----	11	6,300-7,300	720	19	6,400-7,400	656	18	6,500-8,000	1,068
Low-----	6	5,900-6,300	683	4	6,100-6,400	685	7	5,500-6,500	1,026
Houston suburbs									
High-----	1	\$7,200-8,929	\$477	3	\$8,700-14,717	\$977			
Moderately high-----	5	6,300-7,200	615	12	7,400-8,700	693			
Moderately low-----	4	5,000-6,300	528	11	6,600-7,400	631			
Low-----	2	3,700-5,000	472	5	5,600-6,600	738			
Detroit suburbs									

¹ Number of school systems.

Source: The Policy Institute of the Syracuse University Research Corp.

DISPARITIES WITHIN SCHOOL DISTRICTS

The immediate impact of educational finance occurs, however, in individual schools. Yet commenting upon the patterns of disparity in the allocation of resources within school districts to individual schools is at present a hazardous activity in all but a few school systems of the country. Adequate school-by-school data are frequently unavailable and often unreliable.

However, some things can be said about expenditure patterns by schools. First, patterns of discrimination which assigned lower resources to students who were black or of lower socioeconomic and minority racial status were probably both common and systematic through the 1950's and early 1960's. Studies of Detroit, New York, and Atlanta found fairly clear discriminatory patterns. Since the mid-1960's, however, scattered evidence suggests that at least in expenditures, intradistrict discriminatory patterns are weakening or yielding to very mildly compensatory ones. But the source of the change appears to be predominantly the effect of Title I of ESEA and State funds earmarked for the disadvantaged. Studies of Chicago, Rochester, Syracuse, and a decentralized district in New York City reveal this phenomenon. In the New York State study, schools with the highest proportions of low achieving pupils received less funds from local and general State aid money than did the most advantaged schools; but, in those three cities, schools with low achieving pupils had 15 percent, 5 percent and 0.15 percent more to spend when Title I and State "urban aid" were added.

Yet even these studies showed that teachers who were less experienced and new to the district were concentrated in the schools with the highest proportions of educationally disadvantaged. Patterns of rigid discrimination in funding may be breaking down as measured by expenditures and by some school service measures. But what actual compensatory spending and staffing has occurred appears to be of very mild dimensions indeed.

THE RURAL SCHOOL FINANCE PROBLEM

If there is a distinctive urban problem that is apparent in contrast with suburban areas, there is also a distinctly rural school finance problem. In the latter case resource inadequacy for education is not primarily the result of competing demands for governmental services as it is in more urbanized areas. Rather the problem is frequently the virtual absence of taxable property, and variations that come from the location of particularly valuable realty—say resort facilities—is all the more apparent. While rural areas have not suffered from the discrimination in the distribution of State aid that cities have, their high educational need is quite parallel to the urban situation. The following table shows several of the dimensions of the problem of rural areas, and Table VII casts additional light on the problem.

TABLE VII.—*Capacity and need in central cities, outside central cities, and rural areas in 1969*

	Central cities	Outside central cities	Outside metropolitan areas	Total
Fiscal capacity: ¹ Median family income.....	\$9, 157	\$11, 003	\$7, 982	\$9, 433
Need: ¹				
Households below the poverty level 1969:				
Number (in thousands)---	2, 865	1, 670	4, 124	8, 659
Percent.....	14. 5	7. 8	19. 0	13. 8
Families below the poverty line 1969:				
Number (in thousands)---	1, 484	931	2, 533	4, 948
Percent.....	10. 1	5. 0	14. 0	9. 7
Persons below the poverty line 1969:				
Number (in thousands)---	7, 645	4, 492	11, 894	24, 031
Percent.....	13. 3	6. 2	17. 1	12. 1
Median school years completed 1969.....	12. 6	12. 7	12. 4	12. 6
Percent teachers with B.A. ² 1968..	96. 8	95. 9	91. 4	-----
Percent teachers with M.A. ² 1968..	28. 6	24. 5	18. 7	-----

¹ Data compiled from: U.S. Department of Commerce, Bureau of the Census, Special Studies, Social and Economic Characteristics of Metropolitan and Non-Metropolitan Population p. 23 No. 37 Washington, 1970.

² HEW, OE, NCES, Statistics of Rural Public School Systems: Personnel, 1968 p. 10.

Chapter IV

INEQUITIES IN EDUCATIONAL FINANCE: THE CAUSES

In the absence of explicit constitutional assignment of educational responsibility to the Federal Government, plenary power over education rests with State governments. In virtually every State, the legislature is required by the State's constitution to establish and maintain some kind of system of public education. States have traditionally delegated much of their inherent control over education to local school districts, 90 percent of which are independent of local government but dependent upon the State legislature for their powers. Thus has emerged the system of mixed, or shared, power that characterizes State-local relationships in public education.

The tradition of delegating State powers to local school districts has the most profound implications for school finance. As we have previously mentioned, States usually allow local school districts access to certain taxable resources—typically real property taxes—from which school districts are expected to obtain a considerable portion of their revenues. These local revenues are supplemented with funds derived from State taxes. In 1970-71 States provided 41 percent of the funds used for public education, while local school district revenues—mainly from the property tax—provided 51 percent. These proportions have remained remarkably stable over time. Federal revenues the same year accounted for only 7 percent of school revenues.

In the early 1930's there were approximately 130,000 local school districts in America, including thousands of one-room, one-teacher districts. The number of districts steadily declined during the 1940's, 1950's, and the 1960's until in 1969-70 there were only 18,904.* The delegation of taxing powers to a vast and changing array of local districts has resulted in two cardinal facts: Local school districts are grossly unequal in their local fiscal resources per pupil, and the level of fiscal resources is unrelated to the types of educational programs needed by the pupils of a district. This arbitrary grant of unequal taxing power to local school districts not only distinguishes American schools from those in most other Nations but is the most pervasive single determinant of the quality and level of educational services in local schools.

*In 1969 only 1,008 school districts were "dependent" on local town or county governments. Dependent districts are most frequently found in large cities and throughout New England; and in the States of Maryland, North Carolina and Virginia. *N.E.A. Research Bulletin*, Vol. 48, No. 2, May 1970. National Education Association, Washington, D.C., p. 38.

State governments thus have complete authority over arrangements for financing public schools. States exercise this authority by a variety of legislative actions—specifying the conditions under which localities may levy taxes for schools—by appropriating State funds and determining how they shall be distributed among local districts; and by determining rules regarding school expenditures.

Since the 1920's the principle of equalization has been a *central thrust* of State aid to local school districts. Equalization usually refers to equalization of the tax burden for education or equalization of the provision of educational services. If the universal State practice of delegating to school districts the power to tax implies a public policy that a better quality and quantity of public services should be provided to the rich than to the poor, then the presumed intent of State "equalization" programs is to nullify the fiscal and educational impact of the delegation of the property tax to local districts. Actually, as we have shown, States have succeeded in equalizing *neither* tax burdens *nor* educational services, and the result is a hodgepodge of irrationalities and inequities so confusing that it is obviously wrong to call the arrangement a "system" for financing schools in any but the loosest sense.

The effect of a State decision to use locally levied property taxes as the base for school support was explained in the *Serrano* decision of August 30, 1971. In the majority opinion, the court carefully explained that California's "funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors." The argument is so lucid and persuasive that we quote from it at length:

By far the major source of school revenue is the local real property tax. Pursuant to article IX, section 6 of the California Constitution, the Legislature has authorized the governing body of each county, and city and county, to levy taxes on the real property within a school district at a rate necessary to meet the district's annual education budget. The amount of revenue which a district can raise in this manner thus depends largely on its tax base—i.e., the assessed valuation of real property within its borders. Tax bases vary widely throughout the State; in 1969-70, for example, the assessed valuation per unit of average daily attendance of elementary school children ranged from a low of \$103 to a peak of \$952,156—a ratio of nearly 1 to 10,000.

The other factor determining local school revenue is the rate of taxation within the district. Although the Legislature has placed ceilings on permissible district tax rates, these statutory maxima may be surpassed in a "tax override" election if a majority of the district's voters approve a higher rate. Nearly all districts have voted to override the statutory limits. Thus the locally raised funds which constitute the largest portion of school revenue are primarily a function of the value of the realty within a particular school district, coupled

with the willingness of the district's residents to tax themselves for education.

Most of the remaining school revenue comes from the State School Fund pursuant to the "foundation program," through which the State undertakes to supplement local taxes in order to provide a "minimum" amount of guaranteed support to all districts . . . With certain minor exceptions, the foundation program ensures that each school district will receive annually, from State or local funds, \$355 for each elementary school pupil and \$488 for each high school student.

The State contribution is supplied in two principal forms. "Basic State aid" consists of a flat grant to each district of \$125 per pupil per year, regardless of the relative wealth of the district. "Equalization aid" is distributed in inverse proportion to the wealth of the district.

To compute the amount of equalization aid to which a district is entitled, the State Superintendent of Public Instruction first determines how much local property tax revenue would be generated if the district were to levy a hypothetical tax at a rate of \$1 on each \$100 of assessed valuation in elementary school districts and \$.80 per \$100 in high school districts. To that figure, he adds the \$125 per pupil basic aid grant. If the sum of those two amounts is less than the foundation program minimum for that district, the State contributes the difference. Thus, equalization funds guarantee to the poorer districts a basic minimum revenue, while wealthier districts are ineligible for such assistance.

An additional State program of "supplemental aid" is available to subsidize particularly poor school districts which are willing to make an extra local tax effort. An elementary district with an assessed valuation of \$12,500 or less per pupil may obtain up to \$125 more for each child if it sets its local tax rate above a certain statutory level. A high school district whose assessed valuation does not exceed \$24,500 per pupil is eligible for a supplement of up to \$72 per child if its local tax is sufficiently high.

Although equalization aid and supplemental aid temper the disparities which result from the vast variations in real property assessed valuation, wide differentials remain in the revenue available to individual districts and, consequently, in the level of educational expenditures.* For example, in Los Angeles County, where plaintiff children attend school, the Baldwin Park Unified School District expended only \$577.49 to educate each of its pupils in 1968-69; during the same year the Pasadena Unified School District spent \$840.19 on every student; and the Beverly Hills Unified School District paid out \$1,231.72 per child.

*Statistics compiled by the legislative analyst show the following range of assessed valuations per pupil for the 1969-70 school year:

Similar spending disparities have been noted throughout the country, particularly when suburban communities and urban ghettos are compared. (See, e.g., Report of the National Advisory Commission on Civil Disorders (Bantam ed. 1968) pp. 434-436; U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* (1967) pp. 25-31; Conant, *Slums and Suburbs* (1961) pp. 2-3; Levi, *The University, The Professions, and the Law* (1968) 56 Cal. L. Rev. 251, 258-259.)

The source of these disparities is unmistakable: in Baldwin Park the assessed valuation per child totaled only \$3,706; in Pasadena, assessed valuation was \$13,706; while in Beverly Hills, the corresponding figure was \$50,885—a ratio of 1 to 4 to 13. Thus, the State grants are inadequate to offset the inequalities inherent in a financing system based on widely varying local tax bases.

Furthermore, basic aid, which constitutes about half of the State educational funds, actually widens the gap between rich and poor districts. Such aid is distributed on a uniform per pupil basis to all districts, irrespective of a district's wealth. Beverly Hills, as well as Baldwin Park, receives \$125 from the State for each of its students.

For Baldwin Park the basic grant is essentially meaningless. Under the foundation program the State must make up the difference between \$355 per elementary child and \$47.91, the amount of revenue per child which Baldwin Park could raise by levying a tax of \$1 per 100 of assessed valuation. Although under present law, that difference is composed partly of basic aid and partly of equalization aid, if the basic aid grant did not exist, the district would still receive the same amount of State aid—all in equalizing funds.

(Continuation of footnote from previous page.)

	Elementary	High school
Low.....	\$103	\$11, 959
Median.....	19, 600	41, 300
High.....	952, 156	349, 093

(Legislative Analyst, Part V, *supra*, p. 7.)

Per pupil expenditures during that year also varied widely:

	Elementary	High school	Unified
Low.....	\$407	\$722	\$612
Median.....	672	898	766
High.....	2, 586	1, 767	2, 414

(Id. at p. 8)

For Beverly Hills, however, the \$125 flat grant has real financial significance. Since a tax rate of \$1 per \$100 there would produce \$870 per elementary student, Beverly Hills is far too rich to qualify for equalizing aid. Nevertheless, it still receives \$125 per child from the State, thus enlarging the economic chasm between it and Baldwin Park.

THE URBAN FISCAL CRISIS: ITS CAUSES

The most obvious *fiscal* problem of urban education is that city schools do not have enough money. The aggregate level of resources currently being allocated to urban education by local, State, and national governments is inadequate when compared to requirements for expensive educational services. But this seemingly simple problem of an inadequate level of resources turns out, on closer examination, to be a combination of numerous overlapping and sometimes contradictory factors deeply imbedded in the intricate intergovernmental relations of our Federal system. For instance, some problems are primarily local in character, such as municipal overburden, shrinking assessment ratios, or decaying property tax base, matters we shall discuss later in this chapter.

But when such fiscal circumstances are combined with the steady flow of educated people out of cities—a trend that has now been observed for five decades—and their replacement in the city by less well-educated persons requiring extensive public services such as education, city schools find themselves in a double bind so serious that the problems exceed the problem-solving capacity of local structures and resources.

Unfortunately, these problems are more often compounded than alleviated by State action. City schools are often hamstrung by State limitations on their taxing power, and by State aid formulas which favor rural and suburban districts. State school aid formulas do not take into account the fact that the central city tax base must be used in a much heavier proportion for noneducational purposes—for example, police, fire, streets—than is true in suburbia. The result is that State aid per pupil is frequently higher to suburban districts than it is to city districts.

The fiscal problems of urban schools are further aggravated because urban schools feel more keenly than suburban and rural schools the effects of three major sets of constraints on school board decisions about school revenues and expenditures. The three sets can be called legal, traditional, and socioeconomic.

First, Federal, State and local laws and rulings restrict the freedom to maneuver of local decision makers. Rights of citizenship under the U.S. Constitution; stipulations of Federal statutes and administrative regulations and guidelines; court decisions on rights of property and rights of people; State constitutional and legislative mandates; and, municipal policing power all take precedence over school board authority and thus restrict local discretionary authority for budgeting. Statutory restrictions from the State level are especially

severe for city school districts; in seven of the 14 largest cities, State definition of local school board taxing powers is more restricted for city school districts than for other school districts in the same State. Ironically, city schools deliberately sought much of this special law in attempts to insulate city schools from the rigors of city and State political machines.

Second, and perhaps as constraining as legal restrictions, though not nearly so visible, is the tendency in big-city school systems for their administrative arrangements to become so formal and inflexible that they may impair the functioning of the institution and reduce its potential for adaptability. An example is the tradition in most cities of the so-called "merit" systems for promotions into and within the administrative hierarchy; these systems are frequently devices to insure that no "outsider" can receive an appointment to administrative position; and, also function to establish rigid and universalistic criteria for judging all candidates for administrative positions.

Third, a Stanford University study revealed that more than two-thirds of the variation in expenditures per pupil among 107 of the Nation's largest districts was accounted for by the wealth of the district and the socioeconomic level of its population.* This means that local decisionmaking about urban school budgets must be viewed in the context of a number of *de facto* limitations on the decisionmakers' autonomy. Working within these limitations, school administrators and school boards tend to assume that existing programs will continue and focus their budget analysis, meager though it is in some cases, upon proposed changes in, or additions to, the existing programs. To simplify the budget process further formulas are frequently utilized to determine how much will be required for particular categories of expenditure. The formulas act to centralize decisionmaking within the school system and tend to create internally inflexible patterns for allocating school resources, both human and material, since the basic assumption underlying use of formulas is that educational services should be distributed equally.

THE PROPERTY TAX

All schools, but especially the most urban and the most rural schools suffer from the effects of reliance on the property tax as the major local source of school revenue. The property tax is the largest single source of revenue for all State and local governments, and provides 51 percent of all public school revenues. Over 98 percent of public school revenues from local tax sources are property tax revenues. The yield of the property tax has increased throughout the 20th century, and particularly since World War II, whether that yield is measured in absolute dollars or in relation to the gross national product or population. Table VIII compares State and local government property tax yields in selected years.

*H. Thomas James, James A. Kelly, and Walter Garms *Determinants of Educational Expenditures in Large Cities of the United States*. Stanford: Stanford University School of Education, 1966.

TABLE VIII.—*State and local government property tax revenue in selected years, 1902-63*

Year:	Amount (millions)	Per capita	Percentage of—	
			Total, State- local tax revenue	Gross national product
1902-----	\$706	\$8. 92	82. 1	3. 2
1927-----	4, 730	39. 74	77. 7	4. 9
1940-----	4, 430	33. 53	56. 7	4. 4
1950-----	7, 349	48. 45	46. 2	2. 6
1956-----	11, 749	70. 24	44. 6	2. 8
1963-----	20, 089	106. 51	45. 4	3. 4

The full import of State-local reliance on the property tax lies in controversies regarding the equity and administrative practicality of the property tax. Netzer's authoritative treatment of the property tax* begins with these words:

The American property tax abounds in anomalies. During the past century, no major fiscal institution, here or abroad, has been criticized at such length and with such vigor; yet no major fiscal institution has changed so little in modern times. There is a vast literature on the property tax; yet less is known about its overall impact, incidence, and effects than is known about any other major tax. The demise of the property tax as a major factor in the American fiscal scene has long been heralded; yet it continues to finance more than one-fifth of the civilian general expenditures of Federal, State, and local governments. The United States is the citadel of capitalism; yet this tax on wealth is more important in the fiscal system and relative to national income than are comparable taxes in any other advanced country in the world except Canada.**

Property taxes, of course, are the principal local source of revenue for all local government, not just the schools. Generally speaking, it has been a more elastic revenue source than is usually thought—its yield doubled during the 1960's—and every available indicator suggests that it will continue to be a major revenue source for State and local government in the foreseeable future. But despite its durability the property tax suffers from two critical administrative problems: First, unequal assessment; and, second, under assessment.

Almost two-thirds of the States require assessment at full value, yet locally assessed real property averaged less than 33 percent of market

*Source: Dick Netzer, *Economics of the Property Tax*, The Brookings Institution, Washington, D.C., 1966, p. 2.

**Dick Netzer, *Economics of the Property Tax*, The Brookings Institution, Washington, D.C., 1966, p. 1.

value according to the 1967 *Census of Governments*. Assessment variations both *within* and *among* assessment units are scandalous. While progress has been made in narrowing such variations, nearly 40 percent of large assessment districts had coefficients of dispersion—a measure of the departure of individual assessments from the typical level of valuation within an assessment area—that fell outside the minimum level of acceptability, according to the ACIR. Applying a more rigorous test of dispersion, only one-third of assessing areas can qualify as following acceptable practices.* No State can be satisfied with its record in property tax administration, and no other activity of government in the United States is more in need of fundamental reform.

Another problem connected with the property tax is the tendency of many assessors to allow the ratio of assessed values to full market values to decline, thus reducing the capacity of the school district to tap local funds. For example, according to one estimate the assessment ratio in the city of Detroit declined from 90 percent in 1930 to about 50 percent in 1960. The estimates show a decline in assessment ratio in Baltimore from 90 percent in 1930 to 64 percent in 1960; from 80 percent to 45 percent in Cleveland; from 50 percent to 23 percent in Los Angeles; and, from 65 percent to 30 percent in St. Louis.** These reductions are particularly restrictive in many States which define local school taxing authority in terms of tax *rates* and even more restrictive on the many large cities for which taxing authority is limited even more stringently than for other school districts in the same State.

If equitable and reliable assessments are to be achieved, one of two courses of action is indicated. The first, statewide administration—while vulnerable to many of the same problems as local administration—represents a long range hope if not an immediate possibility.

In the meantime, an auditing function is needed. Perhaps State agencies can perform such a function adequately, but it is possible that the same vested interests and political influences that shape local assessments may ensnare State agencies as well. Use of private, State certified appraisers to “audit” local assessments may be needed, similar to the way private C.P.A. auditors regularly review revenues and expenditures of public agencies.

FEDERAL AID

States, then, have delegated unequal grants of power to support education through the creation of local school districts with the authority to tax real property. State aid systems, while nominally designed to offset the resulting disparities in revenue raising ability, have failed to achieve effective equalization. What impact has Federal aid had in affecting the pattern of allocation of resources for education?

*Advisory Commission on Intergovernmental Relations, *State and Local Finances: Significant Features, 1966-69*, pp. 3-4.

**Ratios for 1930 from *National Municipal Review* (December 1931), pp. 707-709; 1960 ratios provided by local officials; 1962 sales-based sample data. U.S. Bureau of the Census, *Census of Governments 1962, Vol. II, Taxable Property Values* (Washington, D.C.: U.S. Government Printing Office, 1963).

Largely because of the impact of Title I of ESEA, which provides close to 40 percent of Federal funds for elementary and secondary education, aggregate Federal aid has a decided equalizing effect. Flowing in greater proportions to districts that are blacker, poorer, and more urbanized, Federal aid has provided a small but strategically welcome aid to many fiscally threatened school districts. (See Tables IX, X, XI.)

The quantity of Federal aid is, however, relatively meager. Its overall 7 percent of total public school revenues often gets lost in comparison with the State and local revenues with which it interacts. Thus in a five-State study of Federal aid distribution, while Federal aid went in larger proportions to central city than to suburban—outside central city—areas in four of the five States under study, suburbs still averaged more than \$100 higher in total revenues for education. (See Table XII.)

The dozens of separate categorical programs with their differing educational objectives lack focus and coordination. Financially, many of them serve to reinforce the disparities between “have” and “have not” districts, offsetting to some extent the impact of Title I. Impacted areas aid, of course, is a notorious villain. Vocational aid continues to be the captive of the small towns and rural areas, despite the amendments of 1968. And Federal administrators, rather than posing a threat of Federal control of American education, suffer from debilitating inferiority complexes when dealing with their State and local counterparts.

TABLE IX.—*Comparison of Federal aid programs and State aid for school districts in metropolitan areas (fiscal year 1967)*

SMSA's over 500,000 population	ESEA I (per pupil)	State discretionary Federal funds ¹ (per pupil)	State aid (per pupil)
California:			
CC ² (N=7).....	\$19. 64	\$11. 44	\$234. 29
OCC (N=119).....	11. 09	8. 92	275. 78
New York:			
CC (N=5).....	53. 90	13. 70	372. 51
OCC (N=73).....	12. 35	11. 44	494. 06
Texas:			
CC (N=4).....	19. 67	5. 73	174. 26
OCC (N=33).....	12. 25	10. 38	209. 35
Michigan:			
CC (N=1).....	37. 15	7. 27	238. 13
OCC (N=31).....	7. 86	5. 75	271. 26
Massachusetts:			
CC (N=1).....	32. 33	7. 18	¹ 236. 00
OCC (N=26).....	7. 95	11. 58	110. 26

¹ ESEA II, NDEA III, VA, vocational education, lunch and milk.

² CC—central city; OCC—outside central city.

Source: Policy Institute of the Syracuse University Research Corp. Project: “The Pattern of Allocation of Federal Aid to Education,” supported by Ford Foundation grant 690-0506A.

TABLE X.—*Comparison of Federal aid programs and State aid for school districts in 5 largest metropolitan areas ranked by median family income (1967)*

School districts in 5 SMSA's (suburbs ranked by income categories) (number of districts and median family income level)	ESEA I (per pupil)	State discretionary Federal funds ¹ (per pupil)	State aid (per pupil)
Los Angeles:			
(2) High (\$12,000 to \$8,600)-----	\$0	\$3. 60	\$230. 25
(17) Moderately high (\$8,600 to \$7,400)---	6. 00	7. 71	242. 04
(12) Moderately low (\$7,400 to \$6,400)---	14. 39	7. 86	272. 63
(4) Low (\$6,400 to \$6,100)-----	24. 19	12. 72	380. 70
(1) Central city (\$6,896)-----	23. 05	4. 92	191. 53
New York City:			
(5) High (\$17,000 to \$10,500)-----	7. 17	7. 74	338. 98
(13) Moderately high (\$10,500 to \$8,000)---	11. 86	12. 18	494. 20
(18) Moderately low (\$8,000 to \$6,500)---	12. 88	10. 68	505. 20
(7) Low (\$6,500 to \$5,500)-----	17. 12	10. 83	584. 55
(1) Central city (\$6,091)-----	68. 72	8. 89	329. 74
Houston:			
(1) High (\$8,900 to \$7,200)-----	2. 61	9. 69	201. 50
(5) Moderately high (\$7,200 to \$6,300)---	4. 03	10. 34	179. 03
(4) Moderately low (\$6,300 to \$5,000)---	7. 40	9. 89	167. 03
(3) Low (\$5,000 to \$3,700)-----	49. 69	9. 06	243. 56
(1) Central city (\$5,902)-----	14. 32	6. 92	172. 60
Detroit:			
(3) High (\$14,700 to \$8,700)-----	1. 70	3. 07	206. 68
(10) Moderately high (\$8,700 to \$7,400)---	6. 56	6. 24	261. 07
(12) Moderately low (\$7,400 to \$6,600)---	7. 52	5. 45	297. 90
(5) Low (\$6,600 to \$5,600)-----	12. 28	7. 03	268. 46
(1) Central city (\$6,069)-----	37. 15	7. 27	238. 13

TABLE X.—*Comparison of Federal aid programs and State aid for school districts in 5 largest metropolitan areas ranked by median family income (1967)—Continued*

School districts in 5 SMSA's (suburbs ranked by income categories) (number of districts and median family income level)	ESEA I (per pupil)	State discretionary Federal funds ¹ (per pupil)	State aid (per pupil)
Boston:			
(3) High (\$9,400 to \$9,000)-----	\$4. 31	\$7. 81	\$125. 20
(6) Moderately high (\$9,000 to \$7,300)---	5. 16	12. 57	121. 78
(11) Moderately low (\$7,300 to \$6,300)---	6. 65	12. 13	99. 73
(6) Low (\$6,300 to \$5,900)-----	14. 93	9. 07	118. 68
(1) Central city (\$5,757)-----	32. 33	7. 18	236. 08

¹ ESEA II, NDEA III, NDEA VA, Vocational Ed., Lunch and Milk.

Source: The Policy Institute of the Syracuse University Research Corp.

TABLE XI.—*Comparison of Federal aid programs and State aid for school districts in 5 large metropolitan areas based on percentage of nonwhite enrollment (1967)*

Districts in 5 largest SMSA's ranked by racial makeup (number of districts)	ESEA I (per pupil)	State dis- cretionary Federal funds ¹ (per pupil)	State aid (per pupil)
New York:			
(8) 15 percent nonwhite or more....	\$30. 89	\$13. 01	\$413. 17
(36) less than 15 percent nonwhite..	10. 62	10. 48	523. 62
Houston:			
(6) 15 percent nonwhite or more....	10. 21	11. 38	193. 25
(8) less than 15 percent nonwhite..	19. 31	8. 35	188. 49
Detroit:			
(5) 15 percent nonwhite or more....	25. 85	8. 07	285. 06
(22) less than 15 percent nonwhite..	5. 13	5. 87	272. 69
Boston:			
(1) 15 percent nonwhite or more....	32. 33	7. 18	236. 08
(26) less than 15 percent nonwhite..	7. 99	11. 58	112. 19
Los Angeles:			
(25) 15 percent nonwhite or more..	15. 30	8. 63	296. 26
(19) less than 15 percent nonwhite..	6. 28	7. 21	236. 72

¹ ESEA II, NDEA III, VA, Vocational Ed., Lunch and Milk.

Source: Policy Institute of the Syracuse University Research Corp. Project: "The Pattern of Allocation of Federal Aid to Education." supported by Ford Foundation grant 690-0506A.

TABLE XII.—Federal aid and total revenue by central city, outside central city, and nonmetropolitan areas (1967)

State	Federal aid	Total revenue	Percent, Federal aid
California:			
Central city.....	\$39	\$684	5.8
Outside central city.....	40	817	4.8
Nonmetropolitan.....	54	641	8.4
New York:			
Central city.....	68	876	7.7
Outside central city.....	31	1,037	3.0
Nonmetropolitan.....	31	923	3.4
Texas:			
Central city.....	38	479	7.9
Outside central city.....	36	485	7.4
Nonmetropolitan.....	63	535	11.8
Michigan:			
Central city.....	29	683	4.2
Outside central city.....	17	666	2.5
Nonmetropolitan.....	30	629	4.8
Massachusetts:			
Central city.....	69	675	10.2
Outside central city.....	38	779	4.8
Nonmetropolitan.....	(1)	(1)	(1)

¹ Not available.

Despite these and other problems, we believe that the Federal role in education can provide a needed stimulus to reform, a lever to move far more than the weight of its own slim share of educational finance. Our concluding section will contain recommendations to that end.

Chapter V

THE ROLE OF THE COURTS

In the last few months, a powerful but uncertain force has begun to upset the equilibrium of patterns of educational finance. Armed with the equal protection clause of the United States Constitution, judges in both the Supreme Court of California and a United States District Court in Minnesota have invalidated State systems for raising and supporting their public schools. Coming at a time of taxpayer revolts against increased spending for education and a growing discontent on the part of civil rights and community groups over the inequities in existing allocation patterns, these decisions have been widely and often wildly welcomed. Yet we fear that much of the enthusiasm for these decisions arises from wishful thinking about what the courts have done—and it will probably not be long before the awakening comes. In short, we would suggest that what the courts have done is to provide an opportunity, not an answer; a starting point for reform, not a solution to the unfairness and irrationality of educational funding in America. Justice Sullivan's opinion for the 6-1 majority in the prestigious California Supreme Court says only that school finance systems [should not] "invidiously discriminate against the poor [by making] the quality of a child's education a function of the wealth of his parents and neighbors." How educational resources should be allocated, however, is a matter for legislatures to determine, and the range of permissible alternatives would seem to be wide and of mixed value. Let us examine the court decisions and possible remedies in somewhat greater detail.

In *Van Duzart* versus *Hatfield*, decided October 12, a Federal District Court applied the reasoning of *Serrano* to Minnesota. First, Judge Lord found that education is a fundamental right, subject to special judicial solicitude:

If the State's objective is a "general and uniform system" of education, as Article VIII, Sections 1 and 2 of the Minnesota Constitution declare, it might be wondered whether the means chosen are rationally adapted to that goal.

However, this issue is not reached because, in the present case, the stricter test of equal protection is clearly more appropriate. This approach requiring close scrutiny of the State law by the Court is triggered whenever either a "fundamental interest" is at stake or the State has employed a "suspect

classification." Here both such factors are involved and mutually reinforce the pupil plaintiffs' attack upon the system.*

Then, the court held that the disparities in funding based upon local property base variations and a nonequalizing State aid system are constitutionally invalid:

In a number of decisions over the last 15 years the United States Supreme Court has made it plain that classifications based upon wealth are suspect. These decisions, convincingly analyzed in *Serrano*, are well known and need no comment here. What is important to note is that the objection to classification by wealth are State created. This is not the simple instance in which a poor man is injured by his lack of funds. Here the poverty is that of a governmental unit that the State itself has defined and commissioned. The heaviest burdens of this system surely fall *de facto* upon those poor families residing in poor districts who cannot escape to private schools, but this effect only magnifies the odiousness of the explicit discrimination by the law itself against all children living in relatively poor districts.

This does not suggest that by itself discrimination by wealth is necessarily decisive. No court has so held. However, when the wealth classification affects the distribution of public education, the constitutional significance is cumulative.

It cannot be argued [denied] that a quality education endows its recipient with a distinct economic advantage over his less educated brethren. By these standards the inexorable effect of educational financing systems as here maintained puts the State in the position of making the rich richer and the poor poorer. If added to this problem is the problem that the parents of children who live in poor districts have also a lower income than the parents in wealthier districts, then the disparity may be even more severe than that alleged by plaintiffs.**

Finally, touching upon the implications of the new ruling the court made clear that it was not imposing a rigid formula but a rule of "fiscal neutrality":

In fact, it is the singular virtue of the *Serrano* principle that the State remains free to pursue all imaginable interests except that of distributing education according to wealth. The State makes the argument that what plaintiffs seek here is uniformity of expenditure for each pupil in Minnesota. Neither this case nor *Serrano* requires absolute uniformity of school expenditures. On the contrary, the fiscal neutrality principle not only removes discrimination by wealth but also allows free play to local effort and choice and openly permits the State to adopt one of many optional school funding systems which do not violate the equal protection clause.***

**Van Dusartz v. Hatfield*, U.S. District Court, District of Minnesota, Third Division No. 3-71 Civ. 243, Pg. 6 (October 12, 1971).

***Ibid*, pg. 9.

****Ibid*, pg. 10.

In summary, Judge Lord ruled as follows:

The issue posed by the children, here as in *Serrano*, is whether pupils in publicly financed elementary and secondary schools enjoy a right under the equal protection guarantee of the 14th Amendment to have the level of spending for their education unaffected by variations in the taxable wealth of their school district or their parents. This Court concludes that such a right indeed exists and that the principle announced in *Serrano v. Priest* is correct. Plainly put, the rule is that the level of spending for a child's education may not be a function of wealth other than the wealth of the State as a whole.*

Were these decisions in California and Minnesota to become the law of the land, what alternatives would be open to State legislatures in the types of systems they could constitutionally adopt? As yet we can only speculate, but the following approaches would seem to be permissible.

1. Full State assumption of the costs of education.
2. Power equalizing State aid, i.e. State aid designed to compensate for disparities in local tax bases so that at any level of effort every community would raise the same amount of money per pupil through the combination of locally raised revenues and compensating State aid.
3. Redistricting school districts in such a way that all had equal property valuation.
4. Aid distribution systems that, regardless of the revenue raising system, insured that educational expenditures were either equalized in absolute terms or were distributed in proportion to a criteria such as educational need.

The impact of these alternatives is quite different indeed. For example, the first, State assumption of the costs of education will entail the raising of additional State revenues. If the increased source of funds is a State income tax that is progressive in its rate structure, the result may be very much in keeping with the approach to equity in raising funds for education preferred by the authors of this report. If, on the other hand, a statewide property tax is employed, and the rates are higher than the characteristically lower *education* tax rates of the central cities—total tax rates are higher in cities than in other regions of States because of the demand for general governmental services—the results of *Serrano*-type litigation would be higher taxation of urban areas for education than is currently the case. If the alternative selected for the distribution of educational services is the equal expenditures approach rather than some measure of educational need, since large city educational expenditure levels tend to be higher than the *average* for the entire State—although they are generally lower than most of their suburbs—the results of a school finance case could result in no additional urban expenditures and perhaps even a lowering of them to a rigidly enforced State norm. In short, the result of one possible constitutional alternative—statewide assumption of educational costs through a State property tax and a distribution of educational

* *Ibid.* Pg. 2

services through an equal expenditures per child formula—could result in higher taxation of city residents for the benefit of education in suburban or rural areas.

Other alternatives would, of course, be more equitable in their effects. Raising revenues through the income tax, plus a heavy component of educational need in the distribution mechanism, would be in keeping with our conception of equal educational opportunity. The point, however, is that the impact of *Serrano* and *Van Dusartz* is highly uncertain at this time, and courts and legislatures will need all the wisdom they can exercise in working their way through this thorny fiscal and educational thicket.

Chapter VI

RECOMMENDATIONS

We have attempted in this testimony to summarize how public schools are financed, but we also have identified the major criteria we believe to be most appropriate for judging how equitably the present finance scheme is serving the public interest. We have based these criteria on a definition of equal educational opportunity and used that definition as a yardstick against which present local, State, and Federal financing arrangements can be measured.

As the testimony reveals, we find present school finance plans sadly dysfunctional in terms of our definition of equal educational opportunity. Our analysis of the ills of the present system has also suggested a number of general policy recommendations that, if implemented, would dramatically reduce the gap between the promise-equality and the reality-inequality in America's public schools. While we do not argue at length for the recommendations in this testimony, the rationales for the recommendations are substantially reflected in our earlier review of how the present system works.

Major fiscal reform in public education must begin at the State level. We believe strongly that the fiscal inequities which plague public education will never be removed unless States assume complete financial responsibility for this vital State responsibility. Specifically, we favor State action first of all to remove the power local school districts now have to tax property and adoption, ideally, of a graduated State income tax sufficient to provide school revenues. Reality suggests, however, that a source of government revenue as productive in its yield as the property tax will not disappear, and if this is the case we favor State assumption of the property tax, including its administration, at a modest but uniform statewide property tax rate.

The State would then have to devise criteria with which to distribute school funds. We favor a basic per pupil distribution with additional amounts for disadvantaged pupils as measured by low aptitude or attainment scores and low socioeconomic status. While other distribution plans could be fashioned and other revenue packages could be defended, we have suggested general approaches we feel to be worthy of serious public consideration.

We stress State action because State-local taxes raise \$.93 of every school dollar and because education is primarily a *State*, not local or Federal, responsibility. However, we would not deny for a moment that there is an important role for the Federal Government to perform in redressing the fiscal inequities in education. We summarize below our key recommendations, recognizing full well the complexi-

ties of the issues involved, and again basing the summary recommendations primarily on the analyses we previously presented of the Federal role as it currently operates.

First, it is clear that the only Federal program now providing substantial dollars for the public schooling of poor children in ESEA Title I. As presently funded, Title I provides about \$1 per participating child per school day—hardly a sum to engender confidence in the program's prospects for success. We favor substantially larger funding for Title I because it targets Federal dollars on children shortchanged by local and State funding patterns while allowing great State and local discretion in determining the nature of the educational program itself.

Federal regulations now require "comparability" in State and local funds as a prerequisite for a school district's receiving Federal funds. We urge rigorous enforcement of this desirable but slippery target so that Federal dollars—notably Title I—can provide the compensatory services for which they were designed, instead of merely filling in the holes left by discriminatory State and local funding plans.

New Federal education programs should feature fiscal arrangements which require and/or stimulate State governments to reform their own State school finance programs. Specifically, Federal aid should be designed to encourage State governments to build State finance plans which not only reduce expenditure disparities and move toward full State funding, but also take into account the total fiscal effort of localities, and pupil characteristics which correlate closely with low achievement. Use of those two sets of factors by States would almost surely increase the State aid flowing to urban districts, and would tend to decrease the possibility that States might balance any Federal increase in urban aid by increases in State aid to suburbs.

A second part of this same problem is the difficulty of assuring that increases in Federal aid are not completely absorbed through salary increases for school personnel, or for tax relief. The former can be partially handled by requiring some sort of proposal from the local district which specifies the educational services to be provided with the Federal money. The latter problem can partially be handled by congressional provision that State and local appropriations shall not be reduced. However, this does not provide protection against action by local tax assessors, who, perceiving new resources available to the schools, may lower assessments or fail to raise them in accordance with growth of market values, thereby reducing the actual taxing power of many urban and nonurban boards of education which operate under fixed maximum rates.

Finally, we point to a critical inadequacy in the data available to the Congress and the public regarding Federal aid to education. One of the key fiscal statistics upon which Federal policy should be built is the aggregate Federal aid to each local educational agency, including all Federal programs aiding public schools. Such data would be extremely useful in identifying the extent to which particular national priority, say, urban education, is receiving support at the present time. In other words, it would tell us what our policy now is. Unfor-

tunately, these data are now available only in crude and incomplete form.

The availability of comprehensive data affects decisionmaking at the Federal level in three ways. First, it provides basic tools and essential information by which the Executive Branch and the Congress can view American education on a nationwide scale and set national priorities for Federal action. Second, availability of comprehensive data permits the design of realistic programs of Federal expenditures to achieve these goals. Finally, it provides a means by which the Federal Government can evaluate the outcomes of program designs both in terms of the distribution of Federal funds and the resulting programmatic and aggregate impact of those funds prior to making new policy decisions. Until school-by-school data are available on the delivery of school services and the allocation of school resources, and until such data are meaningfully linked to their effects on children in specific classrooms, educational policymakers will operate through hunch and guess rather than through a reasoned appraisal of problems and possibilities of public policy.

Chapter VII

CONCLUSION

This report has described and analyzed the financial aspects of inequality of educational opportunity in the United States. It has emphasized the disparities among the level of expenditures in different school districts, has shown that these variations are frequently inverse to the educational need of different communities, and has traced the inequities back to their cause in unequal property tax bases and ineffective State aid equalization formulas. Recent court cases declaring financial inequities unconstitutional were discussed, and their impact was evaluated. Our report closed with a series of recommendations for State and Federal action intended to alleviate the problems we described.

We have not, however, meant to suggest that finances alone control the quality of education in America. We are fully aware of the problems in educational effectiveness that plague many of the schools of the Nation and of the superior education that occurs in many under-financed schools. Yet we are firmly convinced that while more money alone will not solve the crisis in educational quality, lessening the resources available to educators is even less effective in improving education. In short, while more money by itself is not the sole answer to improving the quality of education available to all Americans, it seems to be far more effective than whatever factor may be considered second best. For money buys smaller classes, improved teaching devices, experimentation, new schools to achieve integration, counseling services or near-clinical personnel usage, or whatever other techniques research, development and practice find to be most promising.

But even aside from the question of educational effectiveness, we have little patience with those who ask us to prove, as a condition precedent to reform, that achieving greater equity in the raising and the distribution of revenues will result in improved performance in the schools. For the end result of throwing roadblocks in the way of change is to support the maintenance of the system of educational finance we have described in this report, a system which regularly provides the most lavish educational services to those who have the highest incomes, live in the wealthiest communities, and are of majority ethnic status. In our eyes, this situation is the very definition of inequality of educational opportunity. For a Nation which has aspirations toward achieving an educated, humane, prosperous, and democratic society, reversing that inequitable pattern of educational resource distribution must be at least as high an educational priority as the development of new and more effective ways to help all children to learn.

**INEQUITIES IN SCHOOL FINANCE
IMPLICATIONS OF THE SCHOOL FINANCE CASES AND
PROPOSED FEDERAL REVENUE SHARING PROGRAMS**

A PAPER PRESENTED AT THE
1971 ANNUAL CONVENTION OF THE
AMERICAN ACADEMY FOR
THE ADVANCEMENT OF SCIENCE

by

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PREFACE

American educational finance is characterized by inequities both in the way it distributes educational services and in the way it allocates the burdens of paying for these services. In particular, large central cities are among the areas that are consistently denied educational resources in proportion to their need despite higher overall tax effort than in neighboring jurisdictions.

Recent court cases which have invalidated systems of State finance for public education as violations of the 14th Amendment are unlikely to change such inequitable patterns of resource distribution. If States assume the financing of the current local share of educational revenues through broadbased, proportional rather than progressive taxes, cities will pay more for education than they do at present. If States distribute those revenues back to localities in equal per-pupil amounts, cities will frequently get less from the State redistribution than they currently spend from local sources. It is entirely possible that revisions in State finance that come in the wake of the new legal doctrines may result in higher taxes and lower or at best no greater educational expenditures for urban education.

We believe, therefore, that any program of Federal revenue sharing that is designed to reach the most serious fiscal problems of American public education must be focused on the special fiscal problems of education in large cities and in other areas of relatively low fiscal capacity for raising educational revenues and high incidence of need for costly educational programs.

Such legislation might include a larger proportion of aid being siphoned through the Title I formula or through a formula that would permit States to utilize statewide attainment or aptitude test results as a means of focusing resources where the problems are the greatest. Provisions requiring States to move toward the standard that higher local wealth may not permit higher educational expenditures would also be appropriate to even out the disparities which characterize current finance patterns. But any provision for educational revenue sharing which would permit States to distribute Federal educational revenues according to the historic patterns of State aid would be disastrous in our eyes. The existence of the impetus toward change which *Serrano*, *Van Duzart*, and *Rodriguez* have given are no assurance—as our analysis indicates—that new money will be distributed in order to provide greater equality of educational opportunity or greater responsiveness to fiscal need.

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INTRODUCTION

This paper grows out of a series of research efforts that the authors have been engaged in over the past few years, both jointly, individually, and with other colleagues. Most directly, this paper is based upon two current studies:

1. An examination of the legal and fiscal dimensions of inequalities of educational opportunity*; and

2. An analysis of the 1970 Census data on financial and demographic trends in the largest metropolitan areas of the Nation.**

While the sources of our findings are therefore varied and involve a variety of methodological techniques, the policy implications seem to us to be eminently clear, and may be stated rather simply as follows.

First, American educational finance is characterized by inequities both in the way it distributes educational services and in the way it allocates the burdens of paying for these services. In particular, large central cities are among the areas that are consistently denied educational resources in proportion to their need despite higher overall tax effort than in neighboring jurisdictions. Second, recent court cases which have invalidated systems of State finance for public education as violations of the 14th Amendment are unlikely to change such inequitable patterns of resource distribution. Indeed, it is entirely possible that revisions in State finance that come in the wake of the new legal doctrines may result in higher taxes and lower or at best no greater educational expenditures for urban education. Third, we believe, therefore, that any program of Federal revenue sharing that is designed to reach the most serious fiscal problems of American public education must be focused on the special fiscal problems of education in large cities and in other areas which exhibit relatively low fiscal capacity for raising educational revenues and which have high incidence of need for costly educational programs.

*Joel S. Berke, "The Political Economy of Equal Educational Opportunity," conducted under a Ford Foundation Travel and Study grant at the Brookings Institution, Washington, D.C., 1971-72.

**John J. Callahan and Seymour Sacks, "Fiscal Disparities and Urban Growth," a project conducted for the Advisory Commission on Intergovernmental Relations, 1971-72.

Chapter I

INEQUITIES IN FINANCING THE PUBLIC SCHOOLS

The current approach to financing America's public schools is characterized by inequality of educational opportunity and inequity in the distribution of the burden of supporting educational services. This inequality and inequity stems not simply from the fact that there are marked differences in the quality of education among the schools, school districts, States and regions of the Nation. Rather, what makes those disparities inequitable is that the students who receive the highest quality education are frequently those from the most advantaged backgrounds, while those who come from the most impoverished communities and most disadvantaged social backgrounds often receive no more and frequently far less in the quality of educational services as measured by per-pupil expenditures. Further, under our archaic system of distributing the costs of education, we find that communities which are the most hardpressed to raise revenues for public services which are the most hardpressed to raise revenues for public services in general or for education in particular are the same communities which have the highest educational burdens to support; while those communities whose needs for the total package of public services are less, or where property tax bases are higher than their neighbors', frequently tax themselves far less yet provide superior educational services.

INTERSTATE AND INTRASTATE DISPARITIES IN EDUCATIONAL EXPENDITURES

Let us disentangle the various elements of our argument and document each count of the indictment we have just made. First, the disparities in educational quality as measured by the level of expenditures on education.

Among the States, average expenditures currently range from a high of approximately \$1,400 to a low of less than \$500. (See Table I.) While such statistics appear to be of major current interest, they are really exceedingly difficult to interpret because of the immense variety in the educational finance systems of the 50 States and because State averages, by definition, mask the range of disparities by averaging out high and low districts. In some States, substantial costs for fringe benefits or for school health services may be borne by some jurisdiction other than the school system and so may not appear in average school expenditure statistics. In some States, all school districts may be spending in a very narrow range of variation while in other States there may be vast disparities among the quality of education within the State; yet, the two States may appear quite similar when the average State expenditure is computed.

TABLE I.—Current expenditure per pupil in ADA, public elementary and secondary schools, by State

State	Expenditure per pupil in ADA, 1970-71	Percent of U.S. average	Percent change, 1960-61 to 1970-71
(1)	(2)	(3)	(4)
Alaska.....	\$1,429	170.3	156.1
New York.....	1,370	163.3	134.2
New Jersey.....	1,088	129.7	112.5
Vermont.....	1,088	129.7	210.9
Hawaii.....	1,050	125.1	214.4
Iowa ¹	1,004	119.7	160.1
Connecticut.....	997	118.8	117.7
Wisconsin.....	988	117.8	131.4
Maryland.....	974	116.1	131.9
Delaware.....	954	113.7	105.2
Rhode Island.....	951	113.3	125.9
Pennsylvania.....	948	113.0	124.1
Illinois.....	937	111.7	92.0
Oregon.....	935	111.4	104.6
Wyoming.....	927	110.5	80.2
Washington.....	873	104.1	103.0
Minnesota.....	864	103.0	99.1
Michigan.....	858	102.3	101.4
Montana.....	858	102.3	99.1
Arizona.....	825	98.3	101.7
Louisiana.....	808	96.3	107.7
Nevada.....	804	95.8	85.7
Virginia.....	800	95.4	190.9
California.....	799	95.2	74.8
Colorado.....	780	93.0	92.6
Ohio.....	778	92.7	85.7
Kansas.....	771	91.9	97.7
Florida.....	765	91.2	138.3
Maine.....	763	90.9	150.2
Missouri.....	761	90.7	116.2
Indiana.....	741	88.3	98.1
Massachusetts.....	735	87.6	69.0
New Hampshire.....	729	86.9	98.1
New Mexico.....	713	85.0	95.9
North Dakota.....	689	82.1	83.7
South Dakota.....	688	82.0	85.9
West Virginia.....	684	81.5	151.5
Nebraska.....	683	81.4	96.3
South Carolina.....	656	78.2	185.2
Texas.....	646	77.0	95.2
Utah.....	643	76.6	102.2
North Carolina.....	642	76.5	166.4
Georgia.....	634	75.6	148.6
Kentucky.....	621	74.0	150.4
Oklahoma.....	605	72.1	89.1
Idaho.....	595	70.9	98.3
Tennessee.....	590	70.3	152.1
Arkansas.....	578	68.9	141.3
Mississippi.....	521	62.1	142.3
Alabama.....	489	58.3	98.8
United States.....	839	100.0	113.5

¹ Includes expenditures for area vocational schools and junior colleges.Source: National Education Association, Research Division, *Estimates of School Statistics, 1961-62*. Research Report 1961-R22. Washington, D.C.: the Association, 1961. p. 29, 31.National Education Association, Research Division, *Estimates of School Statistics, 1970-71*. Research Report 1970-R15. Washington, D.C.: the Association, 1970. p. 37.

A second and somewhat more meaningful look at the disparities in educational offerings in the Nation, however, is to examine the range of spending among school districts of each State. Table II shows the high and low expenditure districts in the 49 States with local school districts. Here we begin to reach a somewhat more meaningful unit of analysis, since there is far greater uniformity of the elements being compared within a given State than between States. Also, there is in actuality far more competition among pupils in a given State than there is between pupils from, say, New York and Wyoming. Within a State, the student getting a better education may well be competing in a job market against the student whose school system has given him less effective training, and the inequalities in educational offering become more than an abstract unfairness.

TABLE II.—*Interstate disparities in per pupil expenditures 1969-70*

	High	Low	High/low index
Alabama.....	\$581	\$344	1.7
Alaska.....	1,810	480	3.8
Arizona.....	2,223	436	5.1
Arkansas.....	664	343	2.0
California.....	2,414	569	4.2
Colorado.....	2,801	444	6.3
Connecticut.....	1,311	499	2.6
Delaware.....	1,081	633	1.7
District of Columbia.....			
Florida.....	1,036	593	1.7
Georgia.....	736	365	2.0
Hawaii.....			
Idaho.....	1,763	474	3.7
Illinois.....	2,295	391	5.9
Indiana.....	965	447	2.2
Iowa.....	1,167	592	2.0
Kansas.....	1,831	454	4.0
Kentucky.....	885	358	2.5
Louisiana.....	892	499	1.8
Maine.....	1,555	229	6.8
Maryland.....	1,037	635	1.6
Massachusetts.....	1,281	515	2.5
Michigan.....	1,364	491	2.8
Minnesota.....	903	370	2.4
Mississippi.....	825	283	3.0
Missouri.....	1,699	213	4.0
Montana average of groups.....	1,716	539	3.2
Nebraska average of groups.....	1,175	623	1.9
Nevada.....	1,679	746	2.3
New Hampshire.....	1,191	311	3.8
New Jersey, 1968-69.....	1,485	400	3.7
New Mexico.....	1,183	477	2.5
New York.....	1,889	669	2.8
North Carolina.....	733	467	1.4
North Dakota county averages.....	1,623	686	2.3
Ohio.....	1,685	413	4.0
Oklahoma.....	2,566	342	7.5
Oregon.....	1,432	399	3.5
Pennsylvania.....	1,401	484	2.9
Rhode Island.....	1,206	531	2.3
South Carolina.....	610	397	1.5

TABLE II.—*Interstate disparities in per pupil expenditures, 1969-70—Continued*

	High	Low	High/low index
South Dakota.....	1, 741	350	5. 0
Tennessee.....	700	315	2. 4
Texas.....	5, 334	264	20. 2
Utah.....	1, 515	533	2. 8
Vermont.....	1, 517	357	4. 2
Virginia.....	1, 126	441	2. 6
Washington.....	3, 406	434	7. 8
West Virginia.....	722	502	1. 4
Wisconsin.....	1, 432	344	4. 2
Wyoming.....	14, 554	618	23. 6

NOTES

For New Jersey data are for fiscal year 1969 since fiscal year 1970 data were not yet available.

For Alaska data represent revenue per pupil.

For Montana and Nebraska data are high and low of average for districts grouped by size.

For North Dakota data are averages of expenditures of all districts within a county.

Data are not fully comparable between States since they are based entirely on what data the individual State included in their expenditure per pupil analysis.

Source: State reports and verbal contacts with State officials. U.S. Senate Select Committee on Equal Educational Opportunity.

While as was the case with the interstate comparisons there are numerous methodological difficulties, the main thrust of Table II is clear: School expenditures vary markedly within individual States, and indeed vary far more within States than they do among State averages. While the extreme instances of the highest per-pupil expenditure district spending 20 times the lowest per-pupil expenditure district (as in Texas) are exceedingly anomalous situations usually reflecting the existence of very rich and very small school districts, disparities of two to one are characteristic in most States, and variations of three, four and five to one are not at all unusual. What these figures indicate is that States spend far more on the education of some of their students than they do on others. Are those differences contrasts in the quality of education or just in its cost?

EXPENDITURES AND THE QUALITY OF EDUCATION

Cost differentials account for some of the difference in expenditure; different salary levels for teachers of equal quality may explain away another portion of the disparity. Yet after all the discounts are made, one is left with the belief that disparities of these magnitudes must imply substantial differences in the quality of education received by students within each State. Two tables of statistics may shed some slight light on this question. Table III shows disparities between selected central cities and their "best" surrounding suburban systems in terms not only of dollars but of pupil-teacher ratios. While it may be difficult to prove statistically that marginally smaller classes improve education, try asking any student whether he learns more in smaller

or larger classes. In any event, the differences in this table are not marginal—they average about one-third, and demonstrate, we submit, a linkage between expenditures and quality.

TABLE III.—*Comparison of pupil/teacher ratio in selected central cities and suburbs, 1967*¹

City and suburb	Pupil/teacher ratio	Per pupil expenditures
Los Angeles.....	27	\$601
Beverly Hills.....	17	1, 192
San Francisco.....	26	693
Palo Alto.....	21	984
Chicago.....	28	571
Evanston.....	18	757
Detroit.....	31	530
Grosse Pointe.....	22	713
St. Louis.....	30	525
University City.....	22	747
New York City.....	20	854
Great Neck.....	16	1, 391
Cleveland.....	28	559
Cleveland Heights.....	22	703
Philadelphia.....	27	617
Lower Merion.....	20	733

¹ Taken from: "The Urban Education Task Force Report" (Wilson C. Riles, chairman), New York, N.Y.: Praeger Publishers, Inc., 1970.

Source: Gerald Kahn and Warren A. Hughes, Statistics of Local Public School Systems, 1967, National Center for Educational Statistics, U.S. Office of Education.

Table IV makes the same point another way. Drawn from an evidentiary affidavit in the most recently successful school finance case, it shows the variation in indicators of school quality among the range of types of school districts in the San Antonio area of Texas. What is clear is that the district spending \$595 per pupil, compared with the districts spending \$394 and \$356 per pupil, pays higher salaries, has more teachers with advanced training, has less uncertified teachers, has more counselors proportional to its number of students, and has more professional personnel of all kinds relative to the number of students. While it may be argued that any one of these factors in itself does not mean higher quality education, it seems to us that a reasonable inference from the consistency in these five quality variables is that the higher expenditure school districts are also offering higher quality education.*

* This paper will not address to any substantial extent the disparities in expenditures among schools within a given school district. Data in that area is rare and untrustworthy. However, one intensive study conducted of three large school districts in New York State and several studies in other areas suggest that while disparities do exist, they are relatively mild in terms of expenditure, seldom reaching more than one-third greater expenditures in the highest spending schools viz a viz the lowest expenditure schools, although there are significant differences in the training and seniority of staff in different schools.

TABLE IV.—*The relationship between district wealth and educational quality, Texas school districts categorized by equalized property valuation and selected indicators of educational quality*

Selected districts from high to low by market value per pupil ¹	Total revenues per pupil ²	Professional salaries per pupil ³	Percent, teachers with masters degrees ³	Percent of total staff with emergency permits ³	Counselor student ratios ³	Professional personnel per 100 pupils
Alamo Heights.....	\$595	\$372	40	11	645	4.80
North East.....	468	288	24	7	1,516	4.50
San Antonio.....	422	251	29	17	2,320	4.00
North Side.....	443	258	20	17	1,493	4.30
Harlandale.....	394	243	21	22	1,800	4.00
Edgewood.....	356	209	15	47	3,098	4.06

¹ Policy Institute, Syracuse University Research Corp., Syracuse, N.Y.

² *Ibid.*

³ U.S. District Court, Western District of Texas, San Antonio Division, *Answers to Interrogatories*, civil action No. 68-175-SA.

NOTE.—Table from evidentiary affidavit of Joel S. Berke in *Rodriguez v. San Antonio School Districts*.

DISPARITIES AND NEED

While disparities may in themselves raise questions about the equity of school finance, we believe they are relatively unimportant in and of themselves. Disparities become inequities in our eyes only when they are related to concepts of educational and fiscal need. To the authors of this paper, an equitable system would be one in which greater educational resources would be allocated to those students who come to school with the greatest learning problems and the greatest social disadvantage. Equal educational opportunity, in other words, means to us an allocation of educational services that is intended to make it possible, at least insofar as schools are capable of so doing, for pupils from low socioeconomic backgrounds to compete equally for higher educational and job opportunities with those who come from more advantaged walks of life. Our reading of the current allocation of educational services suggests that this is not the prevailing pattern, and that indeed the prevailing pattern is one which may best be described as one in which "them as has, gits."^{*}

THE SPECIAL FISCAL PROBLEMS OF LARGE CENTRAL CITIES

The mismatch between educational resources and educational and fiscal need for those resources may be seen most clearly in the large

^{*} Furthermore, not only do we maintain that the distribution of educational services denies equal educational opportunity; we maintain that the costs of those services take a greater toll from those less able to pay than it does from those who are better off. For purposes of this paper we will confine our analysis to the comparative fiscal capacity among jurisdictions rather than among individuals, but we believe analysis would show that the same pattern holds for individuals as well as for jurisdictions.

central cities of the Nation, particularly those in the Northeast and Midwest. This is not to say that other areas, some suburban and some rural, do not exhibit some of the same problems facing central cities. What does seem clear, however, is that the problems are sharpest and most easily seen in the older metropolises of the Nation.

There is a rather substantial literature that documents the relationship between low income and ethnic minority status on the one hand and educational disadvantage on the other. In terms both of nonwhite population and proportion of low-income families, large central cities lead their surrounding areas by substantial proportions. In the 37 largest metropolitan areas, central cities average better than 20-percent black population, while the outlying areas have approximately 5 percent. The percentage of nonwhite students in the schools is considerably higher than that in the general population in the cities due to the high proportion of white students in nonpublic schools and because of larger proportions of nonwhite families with children in core cities. The results may be seen in Table V. While Chicago, for example, had a 28-percent nonwhite population, it had a 52-percent nonwhite public school population; Washington, with a 66-percent general population proportion nonwhite had an 88-percent nonwhite school enrollment.

TABLE V.—*Nonwhite population contrasted with nonwhite school enrollment for 15 largest cities: 1960-65*

City	[In percent]			
	Percent nonwhite of total population		Percent nonwhite of school population	
	1960	1965 ¹	1960	1965
New York.....	15	18	22	28
Chicago.....	24	28	40	52
Los Angeles.....	17	21	21	21
Philadelphia.....	27	31	47	55
Detroit.....	29	34	43	56
Baltimore.....	35	38	50	61
Houston.....	23	23	30	34
Cleveland.....	29	34	46	49
Washington.....	55	66	78	88
St. Louis.....	29	36	49	60
Milwaukee.....	9	11	16	21
San Francisco.....	18	20	31	43
Boston.....	10	13	16	26
Dallas.....	19	21	26	27
New Orleans.....	37	41	55	63

¹ Nonwhite figures based on 1960 ratio of Negroes to total nonwhite population applied to 1965 Negro population.

Source: U.S. Department of Health, Education, and Welfare, Office of Education, National Center for Educational Statistics, Division of Statistical Analysis, Reference, Estimates and Projections Branch; and Seymour Sacks, *Educational Finance in Large Cities*, forthcoming (Education in Large Cities Series), Syracuse University Press, 1970. U.S. Bureau of the Census: *Statistical Abstract of the United States, 1969*, 86th ed. (Washington, D.C. 1968).

From: Alan K. Campbell and Donna E. Shalala, *The States and the Urban Crisis*, Englewood Cliffs: Prentice Hall, 1970 p. 10.

Concentrations of low-income families whose children tend to have lower school achievement levels also constitute a higher proportion of central city populations than suburban populations. While the variety among suburbs is marked, the general tendencies come through loud and clear. Particularly in the largest metropolitan areas of the Northeast and Midwest, considerably higher proportions of families earn under \$3,000 in central cities than in the rest of the metropolitan area. In short, students who are apt to present special learning problems and whose education presumably requires higher resource inputs in terms of teaching and counseling time and special programs to compensate for environmental disabilities are present disproportionately in city populations.

Cities also must pay higher prices for educational goods and services. Land acquisition costs, insurance rates, vandalism expenses, and nonprofessional personnel costs all reflect higher costs of living in central cities. But bulking largest in school budgets are costs for instructional personnel, and here a combination of factors has pushed central city costs well above those in suburbs. Several studies are currently in progress which will document this phenomenon, but its elements may be stated although the tables are not yet available for release. Teacher unions have increased urban salaries at a faster rate than salaries in outlying regions, particularly by shortening the time required to reach maximum pay rates. Thus, although starting salaries may be comparable, cities have higher average teacher costs because there are fewer steps in the upward scale. A second phenomenon, that of the upward pressure exhibited because of greater public employee unionism in noneducational services, also has its impact. Sanitationmen, firemen, police, civil service employees all bid up public pay scales in cities in a familiar round of "look how much the — are getting." In suburban areas, this militant competition is far less prevalent because of lower service levels and less union organization.

TABLE VI.—*Per capita total expenditures, 1957-70*

	1957		1970	
	Central cities of standard metropolitan statistical areas	Areas in metropolitan areas outside the central cities ¹	Central cities of standard metropolitan statistical areas	Areas in metropolitan areas outside the central cities ¹
Northeast:				
Washington, D.C.	\$239	\$131	\$1,006	\$425
Baltimore, Md.	199	142	638	349
Boston, Mass.	273	181	531	365
Newark, N.J.	243	181	735	441
Paterson-Clifton-Passaic, N.J.	155	187	381	381
Buffalo, N.Y.	193	210	528	520
New York City, N.Y.	257	260	894	644
Rochester, N.Y.	200	196	699	548
Philadelphia, Pa.	165	138	495	325
Pittsburgh, Pa.	188	128	450	309
Providence, R.I.	160	99	392	265

See footnote at end of table.

TABLE VI.—*Per capita total expenditures, 1957-70—Continued*

	1957		1970	
	Central cities of standard metro-politan statis-tical areas	Areas in metro-politan areas outside the cen-tral cities ¹	Central cities of standard metro-politan statis-tical areas	Areas in metro-politan areas outside the cen-tral cities ¹
Midwest:				
Chicago, Ill.	202	142	473	352
Indianapolis, Ind.	178	107	355	306
Detroit, Mich.	202	200	474	462
Minneapolis-St. Paul, Minn.	185	188	540	520
Kansas City, Mo.	186	112	485	347
St. Louis, Mo.	149	124	463	292
Cincinnati, Ohio.	246	117	761	262
Cleveland, Ohio.	183	193	512	371
Columbus, Ohio.	166	156	398	290
Dayton, Ohio.	167	129	434	285
Milwaukee, Wis.	229	210	562	456
South:				
Miami, Fla.	226	169	481	387
Tampa-St. Petersburg, Fla.	159	89	362	300
Atlanta, Ga.	158	100	554	315
Louisville, Ky.	162	114	508	302
New Orleans, La.	163	120	334	325
Dallas, Tex.	184	108	352	379
Houston, Tex.	155	187	305	307
San Antonio, Tex.	113	104	244	258
West:				
Los Angeles-Long Beach, Calif.	267	203	624	529
San Bernardino, Riverside, Ontario, Calif.	296	192	624	529
San Diego, Calif.	191	189	484	472
San Francisco-Oakland Calif.	223	230	768	596
Denver, Colo.	214	147	502	306
Portland, Oreg.	203	131	486	328
Seattle-Everett, Wash.	174	142	524	471
Total.	196 (212)	155 (170)	523 (600)	384 (419)

¹ That is the suburban ring.

Higher costs in the school system are but a part of the overall financial problem of the central cities. Perhaps their greatest problem in raising educational revenues derives from the far higher costs they must bear for general public services than much less densely populated areas. The roll of urban public needs need not be called; let some simple overall statistics summarize. While central cities in the largest metropolitan areas average \$600 per capita in total local public expenditures for all services, outside central city area total expenditures in those metropolitan areas average only \$419 per person. (See Table VI.) Thus the tax dollar in the city must support a far heavier burden for noneducation services in cities. Education dollars are, therefore,

far harder to raise than in suburbs. The result is that while roughly 30 percent of city expenditures are educational, suburbs devote more than 50 percent of their budgets to their schools. (See Table VII.) There seem to be at least two implications of this situation. Most obviously, the pressure for general public services makes it more difficult for cities to meet their pressing educational needs than for the suburbs.

TABLE VII.—*Education expenditures as a percent of total expenditures, 1967-70*

	1967		1970	
	Central cities of standard metropolitan statistical areas	Areas in metropolitan areas outside the central cities ¹	Central cities of standard metropolitan statistical areas	Areas in metropolitan areas outside the central cities ¹
Northeast:				
Washington, D.C.....	21	64	26	57
Baltimore, Md.....	30	50	35	62
Boston, Mass.....	19	37	26	49
Newark, N.J.....	31	49	29	47
Paterson-Clifton-Passaic, N.J.....	36	52	37	52
Buffalo, N.Y.....	27	47	31	50
New York, N.Y.....	25	54	24	52
Rochester, N.Y.....	27	47	32	59
Philadelphia, Pa.....	30	52	35	63
Pittsburgh, Pa.....	22	50	34	58
Providence, R.I.....	38	60	35	55
Midwest:				
Chicago, Ill.....	24	61	33	57
Indianapolis, Ind.....	35	70	41	63
Detroit, Mich.....	30	57	37	57
Minneapolis-St. Paul, Minn.....	30	51	29	55
Kansas City, Mo.....	34	49	35	56
St. Louis, Mo.....	31	57	38	64
Cincinnati, Ohio.....	33	47	45	50
Cleveland, Ohio.....	27	44	41	53
Columbus, Ohio.....	31	60	33	62
Dayton, Ohio.....	28	61	38	60
Milwaukee, Wis.....	22	41	33	55
South:				
Miami, Fla.....	31	41	42	52
Tampa-St. Petersburg, Fla.....	30	56	45	54
Atlanta, Ga.....	35	53	39	61
Louisville, Ky.....	38	62	48	70
New Orleans, La.....	28	33	38	38
Dallas, Tex.....	35	59	40	56
Houston, Tex.....	42	67	46	60
San Antonio, Tex.....	43	84	50	77

See footnote at end of table.

TABLE VII.—*Education expenditures as a percent of total expenditures, 1957-70—Continued*

	1957		1970	
	Central cities of standard metropolitan statistical areas	Areas in metropolitan areas outside the central cities ¹	Central cities of standard metropolitan statistical areas	Areas in metropolitan areas outside the central cities ¹
West:				
Los Angeles-Long Beach Calif.....	37	46	31	43
San Bernardino, Riverside, Ontario, Calif..	50	42	42	44
San Diego, Calif.....	38	48	38	48
San Francisco-Oakland, Calif.....	29	49	27	44
Denver, Colo.....	34	50	34	64
Portland, Oreg.....	37	61	39	65
Seattle-Everett, Wash..	33	61	29	58
Total.....	32 (29)	53 (51)	36 (31)	56 (53)

¹ That is the suburban ring.

But more important for the workings of school finance formulas, it suggests that the usual measure of the capacity of a district to support educational services should take into account this consistent pattern of municipal overburden. One of the reasons for the lower levels of State aid that have traditionally gone to central cities has been the fact that formulas measuring comparative need were based on the per-pupil value of taxable real property in the school district. Since cities tend to have tax bases equal to or greater than their neighbors when computed on this basis, equalizing aid formulas helped the outside and rural areas more than the "richer" cities. But when one takes into account the greater variety of claims against the urban tax base noted above, realistic State aid formulas should use a more meaningful measure of fiscal capacity if they are to recognize the unique plight of the large cities. One method is to reduce the effective capacity for education by discounting the tax base by the proportion that goes for noneducational functions. Another approach is to divide the tax base by total population rather than students, thus recognizing that education, like all other public services, is a public good of benefit to the entire community, not just the pupils, and that the measure of wealth relates to all the citizens, not just to students. The effect of a per-capita measure rather than per pupil is to depress the apparent wealth of central cities and is another means of recognizing the familiar problem of municipal overburden.

A third approach to the problem of recognizing the special urban fiscal problem might be to take into account the greater tax effort of cities by utilizing their total tax rate (taxes for all local public services) when computing their effort rather than simply their educational taxes. The result would be to show that total suburban tax rates for all

services were only 80 percent of those in the large core cities. (See Tables VIII and IX.) To date, however, State aid formulas have not incorporated techniques to recognize these urban financial problems, although they have been proposed for some time by fiscal reformers.

TABLE VIII.—*Per capita taxes, 1957-70*

	1957		1970	
	Central cities of standard metro-politan statis-tical areas	Areas in metro-politan areas outside the cen-tral cities ¹	Central cities of standard metro-politan statis-tical areas	Areas in metro-politan areas outside the cen-tral cities ¹
Northeast:				
Washington, D.C.-----	\$185	\$75	\$516	\$231
Baltimore, Md.-----	105	62	221	195
Boston, Mass.-----	161	116	369	263
Newark, N.J.-----	178	139	352	294
Paterson-Clifton- Passaic, N.J.-----	118	116	221	278
Buffalo, N.Y.-----	116	112	236	238
New York City, N.Y.--	167	153	384	356
Rochester, N.Y.-----	122	119	272	240
Philadelphia, Pa.-----	115	74	250	180
Pittsburgh, Pa.-----	113	68	294	161
Providence, R.I.-----	109	73	196	165
Midwest:				
Chicago, Ill.-----	138	99	244	251
Indianapolis, Ind.-----	106	68	226	151
Detroit, Mich.-----	127	95	255	210
Minneapolis-St. Paul, Minn.-----	115	75	227	152
Kansas City, Mo.-----	105	69	253	157
St. Louis, Mo.-----	98	75	267	174
Cincinnati, Ohio.-----	137	65	251	134
Cleveland, Ohio.-----	106	98	296	230
Columbus, Ohio.-----	80	72	198	162
Dayton, Ohio.-----	126	52	264	143
Milwaukee, Wis.-----	126	104	306	179
South:				
Miami, Fla.-----	132	94	221	160
Tampa-St. Petersburg, Fla.-----	78	47	170	95
Atlanta, Ga.-----	98	44	252	122
Louisville, Ky.-----	92	59	181	119
New Orleans, La.-----	62	38	148	93
Dallas, Tex.-----	101	43	211	107
Houston, Tex.-----	85	70	181	172
San Antonio, Tex.-----	54	26	102	77
West:				
Los Angeles-Long Beach, Calif.-----	155	102	329	272
San Bernardino, River- side, Ontario, Calif.--	141	81	261	257
San Diego, Calif.-----	93	76	206	198
San Francisco-Oak- land, Calif.-----	140	111	436	305
Denver, Colo.-----	131	68	272	180
Portland, Oreg.-----	135	66	260	153
Seattle-Everett, Wash.--	81	48	203	163
Total.-----	117 (132)	80 (93)	258 (289)	190 (223)

¹ That is the suburban ring.

TABLE IX.—*Taxes as a percent of income, 1957-70*

	1957		1970	
	Central cities of standard metro- politan statis- tical areas	Areas in metro- politan areas outside the cen- tral cities ¹	Central cities of standard metro- politan statis- tical areas	Areas in metro- politan areas outside the cen- tral cities ¹
Northeast:				
Washington, D.C.-----	9.7	4.2	11.3	4.9
Baltimore, Md.-----	6.1	4.0	8.0	5.1
Boston, Mass.-----	9.2	6.1	11.6	6.4
Newark, N.J.-----	13.3	6.5	10.1	6.0
Paterson-Clifton- Passaic, N.J.-----	7.5	6.1	6.3	6.3
Buffalo, N.Y.-----	7.2	7.1	7.1	8.8
New York City, N.Y.-----	10.2	6.7	9.5	7.7
Rochester, N.Y.-----	6.8	6.4	7.2	5.8
Philadelphia, Pa.-----	6.5	4.7	7.7	4.7
Pittsburgh, Pa.-----	6.9	4.8	8.7	4.7
Providence, R.I.-----	7.0	4.7	5.8	5.0
Midwest:				
Chicago, Ill.-----	7.4	4.0	6.4	5.6
Indianapolis, Ind.-----	6.3	6.0	6.2	4.5
Detroit, Mich.-----	7.0	5.3	7.0	5.4
Minneapolis-St. Paul, Minn.-----	6.3	6.2	5.9	4.0
Kansas City, Mo.-----	4.9	5.2	7.5	4.0
St. Louis, Mo.-----	7.3	4.2	9.1	4.8
Cincinnati, Ohio.-----	7.7	4.6	7.1	3.9
Cleveland, Ohio.-----	7.3	5.6	9.6	5.2
Columbus, Ohio.-----	5.1	5.2	5.6	4.4
Dayton, Ohio.-----	8.0	4.9	8.2	3.6
Milwaukee, Wis.-----	8.2	4.4	8.9	4.4
South:				
Miami, Fla.-----	8.2	5.5	7.6	4.5
Tampa-St. Petersburg, Fla.-----	6.3	4.4	3.6	-----
Atlanta, Ga.-----	5.2	4.0	7.1	3.3
Louisville, Ky.-----	5.2	3.5	5.7	3.4
New Orleans, La.-----	4.0	2.5	4.8	3.0
Dallas, Tex.-----	4.8	3.5	5.5	3.2
Houston, Tex.-----	4.8	6.8	5.1	5.6
San Antonio, Tex.-----	(2)	(2)	4.0	2.4
West:				
Los Angeles-Long Beach, Calif.-----	7.2	9.4	7.9	6.8
San Bernardino, River- side, Ontario, Calif.-----	8.1	8.8	7.6	8.5
San Diego, Calif.-----	5.7	6.4	5.7	5.9
San Francisco-Oak- land, Calif.-----	7.8	7.7	10.5	7.5
Denver, Colo.-----	6.8	6.1	7.4	5.4
Portland, Oreg.-----	6.7	5.3	7.0	4.5
Seattle-Everett, Wash.-----	4.3	5.0	5.1	4.4
Total-----	7.0 (7.6)	5.4 (5.6)	-----	-----

¹ That is the suburban ring.² Not available.

The result of all this is that despite their more costly student populations, higher costs for things that schools must purchase, and difficulty in freeing dollars from other urban functions to use for educa-

tion, central cities in many areas spend less than their suburban neighbors and at best do slightly better than break even. Given the massive costs which have been estimated for effective compensatory educational programs, the cities are receiving grossly inequitable treatment in relation to their greater educational and fiscal needs. (See Table X.)

TABLE X.—*Per capita and per pupil educational expenditures, 1957-70*

	1957		1970	
	Central cities of standard metro-politan statis-tical areas	Areas in metro-politan areas outside the cen-tral cities ¹	Central cities of standard metro-politan statis-tical areas	Areas in metro-politan areas outside the cen-tral cities ¹
Northeast:				
Washington, D.C.-----	\$261	\$244	\$1, 325	\$1, 021
Baltimore, Md.-----	222	215	1, 042	960
Boston, Mass.-----	139	177	952	665
Newark, N.J.-----	216	205	1, 069	1, 030
Paterson-Clifton- Passaic, N.J.-----	141	197	849	1, 000
Buffalo, N.Y.-----	165	261	933	1, 155
New York City, N.Y.---	215	332	1, 594	1, 419
Rochester, N.Y.-----	225	325	1, 415	1, 371
Philadelphia, Pa.-----	174	203	1, 145	1, 000
Pittsburgh, Pa.-----	154	180	807	853
Providence, R.I.-----	139	146	1, 000	741
Midwest:				
Chicago, Ill.-----	158	199	935	900
Indianapolis, Ind.-----	144	194	735	805
Detroit, Mich.-----	177	261	989	1, 092
Minneapolis-St. Paul, Minn.-----	154	284	994	1, 033
Kansas City, Mo.-----	169	194	710	776
St. Louis, Mo.-----	176	187	926	842
Cincinnati, Ohio.-----	210	195	1, 077	947
Cleveland, Ohio.-----	133	179	665	688
Columbus, Ohio.-----	165	171	801	690
Dayton, Ohio.-----	183	250	1, 040	1, 092
Milwaukee, Wis.-----	183	250	1, 040	1, 092
South:				
Miami, Fla.-----	202	202	1, 058	1, 058
Tampa-St. Petersburg, Fla.-----	162	162	890	890
Atlanta, Ga.-----	218	191	928	827
Louisville, Ky.-----	126	123	685	624
New Orleans, La.-----	142	156	676	684
Dallas, Tex.-----	140	185	639	756
Houston, Tex.-----	123	198	564	744
San Antonio, Tex.-----	123	198	564	744
West:				
Los Angeles-Long Beach, Calif.-----	193	226	910	900
San Bernardino, River- side, Ontario, Calif.---	267	232	1, 077	913
San Diego, Calif.-----	186	227	759	894
San Francisco-Oak- land, Calif.-----	209	264	722	1, 086
Denver, Colo.-----	170	195	904	707
Portland, Oreg.-----	188	213	974	938
Seattle-Everett, Wash.---	150	275	938	1, 015
Total-----	183	211		

¹ That is the suburban ring.

One interesting table drawn from a recent study of New York State shows the problem graphically. It divides city and noncity school districts of similar per-pupil property valuation and shows that in virtually every cell of the table, cities have lower educational tax rates but higher total tax rates, receive generally less State aid and end up with somewhat lower expenditures for a pupil population that has more than twice as many children scoring at least two grade levels behind the State norm in reading, and more than three times as many children from families receiving AFDC payments.

TABLE XI.—Selected data for 119 New York State school districts, city and noncity within cohort wealth groups

Full taxable property value per WADA (city, noncity)	School tax rate		Total tax rate		Total State aid		Total expenditures per WADA		Percent low achievement		AFDC (percent)	
	Noncity	City	Noncity	City	Noncity	City	Noncity	City	Noncity	City	Noncity	City
48,000 and above (noncity, N=8; city, N=1)-----	\$16.78	\$11.84	\$34.18	\$37.15	\$315.25	\$351.0	\$1,320	\$1,187	17.7	34.0	5.6	15.0
45,938 minus 3,634 (noncity, N=8; city, N=4)-----	19.53	16.23	34.73	45.57	383.37	356.25	1,203	1,146	15.0	31.5	4.5	17.3
35,396 minus 24,150 (noncity, N=29; city, N=9)-----	19.42	16.43	33.81	37.80	475.72	463.44	1,088	1,011	14.7	27.8	2.3	12.7
23,610 minus 12,190 (noncity, N=49; city, N=7)-----	18.57	15.91	35.92	41.41	629.24	566.85	998	972	17.5	22.3	3.8	8.6
11,741 and below (noncity, N=5; city, N=0)-----	14.96	-----	43.21	-----	619.0	-----	1,014	-----	18.4	-----	3.0	-----

INEQUITIES IN EDUCATIONAL FINANCE OUTSIDE THE LARGE CITIES

While this paper has emphasized the central city problem, we do not believe that it is the only area of inequity in American educational finance. School districts outside central cities, both within metropolitan areas and in more rural regions, exhibit some of the same patterns of inequity. Table XII is illustrative. A randomly selected sample of school districts in five major metropolitan areas, excluding the central city districts, shows considerable disparities in the level of school expenditures. Far more important, however, is the relationship between the property valuation of these districts and their expenditures. With only one minor deviation among all four categories in five States, the richer the districts, the more they spend on education. In short, according to our view that public education should offset socioeconomic disparities, to the extent that socioeconomic status follows the differences in property valuation in these suburban school districts, school finance patterns exacerbate inequality of educational opportunity.

But we have already noted that the inequity in school finance lies not only in the way it distributes educational services. It lies also in the way it raises funds to pay for those services. Relying almost exclusively upon the property tax for locally raised revenues, education is subject to the massive disparities in tax base that characterize American local governments. Examples of the range may be seen on Table I*. The consequence of such difference is that districts rich in property may levy relatively low tax rates and yet raise far more proportionately than districts with smaller tax bases. An example of what these patterns can produce may be seen in Table XIII, which draws upon a random sample of Texas school districts. Taxpayers fortunate enough to live in the wealthiest districts can raise nearly 10 times as much with a rate only half that of the poorest districts. It would be hard to develop a definition of equity in taxation that could justify such a system.

*See page 134.

TABLE XII.—*Per pupil suburban property value and school revenues in 5 metropolitan areas, 1967*

Property valuation category	Boston suburbs		Los Angeles suburbs		New York suburbs		Houston suburbs		Detroit suburbs	
	Valuation per pupil ¹	Revenue per pupil	Valuation per pupil	Revenue per pupil	Valuation per pupil	Revenue per pupil	Valuation per pupil	Revenue per pupil	Valuation per pupil	Revenue per pupil
High.....	\$44,767(3)	\$824	\$57,414(3)	\$958	\$60,842(5)	\$1,411	\$140,719(1)	\$928	\$27,138(4)	\$899
Moderate high.....	26,343(11)	780	17,176(16)	686	31,384(16)	1,172	64,356(5)	571	14,750(12)	724
Moderate low.....	20,554(9)	760	7,195(16)	630	18,413(17)	1,043	27,146(4)	466	9,282(11)	629
Low.....	15,481(5)	595	5,079(3)	663	10,997(3)	1,009	12,494(2)	482	6,550(4)	599

¹ Figures in parentheses represent number of school systems.

Source: Policy Institute, Syracuse University Research Corp., Syracuse, N. Y.

TABLE XIII.—*The relationship of district wealth to tax effort and tax yield.¹ Texas school districts categorized by equalized property values, equalized tax rates, and yield of rates*

Categories—market value of taxable property per pupil	Equalized tax rates on \$100	Yield per pupil (equalized rate applied to district market value)
Above \$100,000 (10 districts)-----	\$0.31	\$585
\$100,000 to \$50,000 (26 districts)-----	.38	262
\$50,000 to \$30,000 (30 districts)-----	.55	213
\$30,000 to \$10,000 (40 districts)-----	.72	162
Below \$10,000 (4 districts)-----	.70	60

¹ Source: Policy Institute, Syracuse University Research Corp., Syracuse, N.Y. From evidentiary affidavit of Joel S. Berke in *Rodriguez v. San Antonio*.

Chapter II

THE EMERGING LEGAL DOCTRINES AND THEIR IMPLICATIONS

The causes of the inequity that we have traced are easy to identify. First, States have created school districts with capacities to raise revenues for education that vary from district to district and bear little rational relation to the educational needs of different pupil populations. Second, State aid formulas, while nominally equalizing, have failed to compensate for the inequitable patterns of taxable property and educational need. While these problems have been recognized for some time, hardened political coalitions have protected the self-interest of communities that have benefited from the current system. Since August 30, 1971, a new hope has inspired those who have sought to revise the present systems of educational finance. For on that day, the prestigious Supreme Court of the State of California held that the system of State educational finance was unconstitutional because it "invidiously discriminate[d] against the poor [by making] the quality of a child's education a function of the wealth of his parents and neighbors." While *Serrano* versus *Priest* has not furnished guidelines as to what type of educational finance system will satisfy the Constitution, it has made clear that the quality of education may not be a function of variations in local wealth.

If *Serrano* becomes the law of the land, and to date it has been adopted as the appropriate interpretation of the 14th Amendment in Federal courts in Minnesota and Texas to invalidate State school finance laws, the alternatives open to legislatures would seem to include at least the following:

1. Full State assumption of the costs of education.
2. Power equalizing State aid, i.e. State aid designed to compensate for disparities in local tax bases so that at any level of effort every community would raise the same amount of money per pupil through the combination of locally raised revenues and compensating State aid.
3. Redistricting school districts in such a way that all had equal property valuation.
4. Revenue distribution systems that insured that educational expenditures were either equalized in absolute terms or were distributed in proportion to a criteria such as educational need.

While the authors of this paper have themselves been a part of study teams that have sought to develop State systems of finance that would utilize measures of educational need of a compensatory nature, we fear that the direction that change may take in the post-*Serrano* period

will be that of providing essentially equal expenditures for all children financed from a broad based statewide tax system of proportional rather than progressive rates. Despite the widespread enthusiasm that the California, Minnesota, and Texas cases have raised throughout the Nation, it is our belief that finance reform of the type just described will not result in removing the major inequities in American educational finance and on the contrary may well exacerbate the problems of a substantial proportion of urban schools.

EFFECTS OF STATE ASSUMPTION OF COSTS AND EQUAL PER PUPIL REVENUE DISTRIBUTION

Our analysis consists of applying a system of the type described above to the central cities of the 37 largest metropolitan areas. To evaluate the tax implications, we have calculated the total cost to the State of assuming the local share of educational revenues for the State in which the city is located, allocated the burdens of paying for those costs on the basis of the proportion of the State's disposable income located in those central cities, and shown the tax burden for education in those cities as a percentage of income. While the tax model we have posited would use an income tax of proportional rather than progressive rates, essentially the same results would have resulted from any broad based, nonprogressive tax such as a statewide sales or property tax. As Table XIV indicates, the results are rather sobering for those concerned about the urban financial crisis. In three-fourths of the cities in these large metropolitan areas, school taxes would rise, and of the six exceptions to this tendency, three are located in a single State, Ohio, and in a fourth the tax rates would remain virtually the same.

The expenditure implications, however, are even more jarring. For this aspect of the analysis, we have assumed that the local share of revenues assumed by the State would be redistributed on an equal per-pupil basis through the State. (While we have not taken into account the State and Federal shares of revenue in this study, we are confident that the patterns would be essentially the same based upon the pattern of expenditures noted in the earlier section of this paper.) Columns three and four show the results. Nearly twice as many central cities would receive lower expenditures from the States under equal statewide per-pupil distribution of funds than they presently receive under the existing revenue structure. In a number of cases, for example New York City, the proportion of income taxed for educational purposes would rise from 2.5 percent to 3.1 percent, yet the expenditures from local sources that were \$694 in the 1970 school year would drop under an equal per-pupil statewide redistribution of the State assumed local share to \$636. In short, not only would New York be paying more, under equal per-pupil statewide redistribution, it would be receiving less.

The last column on Table XIV makes another disturbing point. It shows what the local expenditures would be were cities to apply the new statewide tax rates to their tax base and keep the resulting revenues for school purposes instead of paying them into the State pot. In four-fifths of the cases in the largest 37 metropolitan areas, cities

TABLE XIV.—*Tax effort and expenditures implications under State assumption and equal per pupil distribution*

	Percent of income taxed for school purposes		Local expenditures per pupil		
	1970	Under State assumption	1970	Statewide equal expenditures	Local expenditures under statewide tax rate ¹
Northeast:					
Baltimore, Md.	3.4	3.7	\$444	\$538	\$486
Boston, Mass.	2.5	3.6	522	632	741
Newark, N.J.	3.4	3.8	587	707	648
Paterson-Clifton- Passaic, N.J.	(²)	3.8	(²)	707	797
Buffalo, N.Y.	1.6	3.1	347	636	662
New York City, N.Y.	2.5	3.1	694	636	863
Rochester, N.Y.	3.0	3.1	697	636	727
Philadelphia, Pa.	2.0	2.7	444	446	593
Pittsburgh, Pa.	2.5	2.7	596	446	650
Providence, R.I.	2.9	2.8	701	477	678
Midwest:					
Chicago, Ill.	1.4	3.3	307	600	754
Indianapolis, Ind.	2.4	2.8	415	377	495
Detroit, Mich.	2.1	2.9	439	396	589
Minneapolis-St. Paul, Minn.	2.3	3.3	582	429	835
Kansas City, Mo.	(²)	3.0	(²)	408	428
St. Louis, Mo.	2.7	3.0	422	408	469
Cincinnati, Ohio.	4.6	3.4	677	490	499
Cleveland, Ohio.	4.8	3.4	749	490	530
Columbus, Ohio.	3.0	3.4	479	490	546
Dayton, Ohio.	3.7	3.4	632	490	568
Milwaukee, Wis.	3.4	4.3	599	573	708
South:					
Miami, Fla. (Dade County)	1.6	1.8	287	383	324
Tampa-St. Peters- burg, Fla.	1.3	1.8	222	383	315
Atlanta, Ga.	2.4	1.5	395	175	350
Louisville, Ky.	1.6	1.6	341	191	343
New Orleans, La.	1.5	1.9	261	212	325
Dallas, Tex.		2.2	(²)	275	409
Houston, Tex.		2.2	(²)	275	364
San Antonio, Tex.		2.2	(²)	275	259
West:					
Los Angeles-Long Beach, Calif.		2.9	(²)	433	531
San Bernardino, River- side, Ontario, Calif.		2.9	(²)	433	403
San Diego, Calif.		2.9	(²)	433	423
San Francisco- Oakland, Calif.	2.5	2.9	709	435	817
Denver, Colo.	3.3	4.3	667	507	864
Portland, Oreg.	2.3	2.0	442	672	980
Seattle-Everett, Wash.	1.7	2.3	436	328	608

¹ Local revenues that would be generated if the statewide rates were applied but the revenues raised by those rates were retained for local expenditure.

² Not compiled.

would have had higher revenues than they receive under a State per-pupil distribution of the formerly locally raised revenue. What is occurring, then, is that under our revenue-expenditure model, educational resources are being redistributed from large cities to other parts of the State. The reason for this phenomenon lies in the analysis already discussed in the first section of this paper, which showed that city tax rates *for education* were lower than in the surrounding areas because city tax rates *for all governmental functions combined* were higher in other parts of metropolitan areas. The explanation for the expenditure effects has also been shown: City educational costs are considerably higher than those in other parts of the State; and, while expenditures in cities are not as high as their added costs and greater educational need requires, they are higher than expenditures in rural areas and in some suburban areas. Certainly, city school expenditures usually are above the statewide average of districts, and thus cities lose or only break even in plans that have equal per-pupil expenditures throughout the State or which "level up" to the State average.

To show the impact of our tax-expenditure model on cities and their suburbs, we took a random selection of 13 of the 37 largest metropolitan areas, and looked at a large central city and its suburban county. (We were unable to complete calculations for the entire outside central city area.) Table XV displays the comparative tax rate effects. In six of the eight large cities in the Northeast and Midwest, suburban taxes would rise under State assumption, but the rise would be markedly less than in the cities in most cases. Both areas would be redistributing to non-metropolitan areas or to the least urbanized portions of metropolitan areas. In the South the tax impact of statewide assumption would permit the suburban counties in both metropolitan areas to reduce tax effort for education, while the cities would get either a lesser degree of tax relief or none at all. In the West, all three cities would have their tax effort increased, while that would be the case for only one suburban county.

TABLE XV.—*Local school tax effort (taxes as a percent of income)*

	1970 city tax effort	1970 suburban tax effort	State assump- tion and tax effort
Northeast:			
Boston, Mass.—Norfolk.....	2.5	3.5	3.6
Newark, N.J.—balance Essex.....	3.4	2.5	3.8
New York City, N.Y.—Westchester.....	2.5	2.8	3.1
Midwest:			
Indianapolis, Ind.—balance Marion.....	2.4	3.4	2.8
Minneapolis, Minn.—balance Hennepin.....	2.3	2.5	3.3
St. Louis, Mo.—St. Louis.....	2.7	2.4	3.0
Cleveland, Ohio—balance Cuyahoga.....	4.8	3.7	3.4
Milwaukee, Wis.—balance Milwaukee.....	3.3	3.6	4.3
South:			
Atlanta, Ga.—balance Fulton.....	2.4	3.2	1.5
Louisville, Ky.—balance Jefferson.....	1.6	2.3	1.6
West:			
Oakland, Calif.—Alameda.....	2.7	3.0	2.9
Denver, Colo.—Jefferson.....	3.3	2.8	4.3
Seattle—Everett, Wash.....	1.7	2.5	2.3

Table XVI shows the comparative central city-suburban expenditure results. The first two columns show the Northeast and Midwest phenomenon of central cities spending somewhat less than their suburban counties. (Since this table deals with the suburban areas nearest the central cities, it omits the rural portions of metropolitan areas which depressed the suburban expenditure levels in the analysis in Part I of the paper.) After equal per-pupil distribution of the State assumed local share, the third column shows the new statewide expenditure levels from what were formerly local revenues. Only two of the eight Northeastern and Midwestern cities gain, while only one suburb does. And the rates by which the suburbs exceed the State average are substantially higher than in the cities. The last two columns show what local expenditures would be, were the new statewide tax rates applied and the revenues retained in the local jurisdiction.

TABLE XVI.—*Locally raised expenditures per pupil*

	1970 city	1970 suburban	Statewide equal expenditure	Local revenue resulting from statewide rates ¹	
				City	Suburban
Northeast:					
Boston, Mass.-Norfolk.....	\$522	\$694	\$632	\$741	\$710
Newark, N.J.-bal. Essex.....	587	777	707	648	1,160
New York City, N.Y.-Westchester.....	694	839	636	863	915
Midwest:					
Indianapolis, Ind.-bal. Marion.....	415	519	377	495	431
Minneapolis, Minn.-bal. Hennepin.....	582	416	429	835	549
St. Louis, Mo.-St. Louis.....	422	454	408	469	571
Cleveland, Ohio-bal. Cuyahoga.....	749	951	490	530	864
Milwaukee, Wis.-bal. Milwaukee.....	599	828	573	768	989
South:					
Atlanta, Ga.-bal. Fulton.....	395	441	175	250	214
Louisville, Ky.-bal. Jefferson.....	341	325	191	343	225
West:					
Oakland, Calif.-Alameda.....	568	462	433	610	408
Denver, Colo.-Jefferson.....	662	382	507	864	576
Seattle-Everett, Wash.....	436	355	328	608	332

¹ Local revenues that would be generated if cities and suburbs applied the new rates that resulted from State assumption but retain the revenue raised by those rates.

The foregoing tax expenditure analysis should, we believe, be seen as a warning to those who have uncritically hailed the new cases and proposals that call for State assumption of educational costs by proportional taxes and a reduction of expenditure disparities. Our study suggests, we further believe, some policy recommendations for State action:

To devise educational finance plans that will match resources to need by recognizing the higher costs;

1. of pupils with learning disadvantages;
2. of areas which have heavier than average fiscal responsibilities;
3. higher than average cost of living levels; and,
4. that draw their revenues from tax plans that are characterized by progressive rather than proportional rates.

Chapter III

IMPLICATIONS FOR FEDERAL EDUCATION REVENUE SHARING PROGRAMS

But while we hope that States will adopt programs in line with the suggestions we have made, we are not sanguine about the possibilities. The record of the States in recognizing the special needs of urban areas or the higher educational requirements of educationally disadvantaged pupil populations is not noteworthy. Indeed, it is the small but important share of educational financing that has been contributed by the Federal Government that has been the most effective fiscal contribution to equal educational opportunity in American school finance. The contrast among two types of Federal aid programs and State aid to education may be seen in Tables XVII and XVIII.

TABLE XVII.—*Comparison of Federal aid programs and State aid for school districts in metropolitan areas, 1967*

All areas larger than 500,000 population	ESEA I (per pupil)	State discretionary Federal funds ¹ (per pupil)	State aid (per pupil)
California:			
Central city (N=7).....	\$19.64	\$11.44	\$234.29
Outside central city (N=119).....	11.09	8.92	275.78
New York:			
Central city (N=5).....	53.90	13.70	372.51
Outside central city (N=73).....	12.35	11.44	494.06
Texas:			
Central city (N=4).....	19.67	5.73	174.26
Outside central city (N=33).....	12.25	10.38	209.35
Michigan:			
Central city (N=1).....	37.15	7.27	238.13
Outside central city (N=31).....	7.86	5.75	271.26
Massachusetts:			
Central city (N=1).....	32.33	7.18	236.00
Outside central city (N=26).....	7.95	11.58	110.26

¹ ESEA II, NDEA III, VA, Vocational Education, lunch and milk.

Source: The Policy Institute of the Syracuse University Research Corp.

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TABLE XVIII.—*Comparison of Federal aid programs and State aid for school districts in 5 large metropolitan areas based on percentage of nonwhite enrollment*

Districts in 5 largest SMSA's ranked by racial makeup	ESEA I (per pupil)	State discretionary Federal funds ¹ (per pupil)	State aid (per pupil)
New York (number of districts):			
(8) 15 percent nonwhite or more.....	\$30. 89	\$13. 01	\$413. 17
(36) less than 15 percent nonwhite.....	10. 62	10. 48	523. 62
Houston:			
(6) 15 percent nonwhite or more.....	10. 21	11. 38	193. 35
(8) less than 15 percent nonwhite.....	19. 31	8. 35	188. 49
Detroit:			
(5) 15 percent nonwhite or more.....	25. 85	8. 07	285. 06
(22) less than 15 percent nonwhite.....	5. 13	5. 87	272. 69
Boston:			
(1) 15 percent nonwhite or more.....	32. 33	16. 84	236. 08
(24) less than 15 percent nonwhite.....	7. 99	12. 79	112. 19
Los Angeles:			
(25) 15 percent nonwhite or more.....	15. 30	7. 18	296. 26
(19) less than 15 percent nonwhite.....	6. 28	11. 58	236. 72

¹ ESEA II, NDEA III, VA, Vocational education, lunch and milk.

In the first we show the differential effects on central city and suburban areas of ESEA I, which is distributed on the basis of a poverty formula, as compared with other Federal programs which leave considerable discretion to the States in determining the criteria for allocation, and State aid programs. Clearly, Title I is the most responsive to the urban fiscal crisis and State aid the least. (While figures on this table do not include nonmetropolitan or rural areas, the pattern there would show equally high Title I and other Federal aid payments and greater amounts of State aid in rural areas vis-a-vis cities. Table XVIII shows the effects of the same programs on metropolitan school districts categorized by race. Here again we note that Title I is more responsive to this aspect of educational need than are State aid systems. The policy implications, we would suggest, are that educational revenue sharing must be highly compensatory if it is to serve the real needs of education for greater equality of educational opportunity. Title I functions as it does because the formula for distribution has clear requirements that funds be awarded in relation to the number of children from poor families, and it thus recognizes both the fiscal and educational needs of central city and rural areas. Given the current pattern of educational inequity described in Section I and the ineffectiveness of the most likely results of post-Serrano changes for

resolving the large city educational finance crisis, we urge a strong component of attempts to recognized educational need in Federal educational revenue sharing legislation.

Such legislation might include a larger proportion of aid being siphoned through the Title I formula or through a formula that would permit States to utilize statewide attainment or aptitude test results as a means of focusing resources where the problems are the greatest. Provisions requiring States to move toward the standard that higher local wealth may not permit higher educational expenditures would also be appropriate to even out the disparities which characterize current finance patterns. But any provision for educational revenue sharing which would permit States to distribute Federal educational revenues according to the historic patterns of State aid would be disastrous in our eyes. The existence of the impetus toward change which *Serrano*, *Van Duart*, and *Rodriguez* have given are no assurance—as our analysis indicates—that new money will be distributed in order to assure greater quality of educational opportunity or greater responsiveness to fiscal need.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS

The following charts were compiled by R. Stephen Browning, Lawyers' Committee for Civil Rights Under Law; and Myron Lehtman, Task Force on School Finance, U.S. Office of Education, Department of Health, Education, and Welfare. They have been updated through August 1972.

Additional information can be obtained from

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
733 15TH STREET, N.W.
WASHINGTON, D.C. 20005

15-1 (165)

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS

Case	Plaintiffs	Defendants	Claim	Remedy	Status
ARIZONA Clarence County Hullins, et al. v. W. P. Shorsail, et al.	Public school students and their parents who are homeowners and taxpayers in Maricopa County.	The Superintendent of the Arizona Depart- ment of Education; the Arizona Board of Education, the Treasurer and At- torney General of Arizona, and the Superintendent of the Maricopa County public schools.	Plaintiff-children allege that under the financing scheme now in effect in Arizona, the amount of revenue available to their school districts is determined substantially by the wealth of local school districts and that poor school districts are therefore unable to offer as much educational opportunities to their students as wealthier districts. Plaintiff-children claim that the Arizona school financing scheme fails to meet the minimum requirements of the equal protection clauses of the United States and Arizona Constitutions.	Plaintiffs ask the court to declare the Arizona financing scheme to be unconstitutional and void; to order the defendants to reallocate school funds in a manner so as not to be unconstitutional; and to allow the legislature a reasonable time to restructure the school financing scheme that will provide equal educational opportunities as required by the State and Federal Constitutions. However, should the legislature fail to act, the plaintiffs ask the court to order the defendants to act in a constitutional manner in the collection and apportionment of school funds.	Filed on Oct. 12, 1971, in the Arizona Superior Court for Maricopa County, the Arizona school finance system was declared unconstitutional on June 1, 1972, on a motion for summary judgment. Citation: U-253652.
ARKANSAS Marion County Willigan, et al. v. Yarborough, et al.	Taxpaying citizens of Marion County, Ark.	Superintendent of Schools and Board of Directors of Marion County Rural School Dis- trict No. 1; Gov- ernor; At-Large General members of the Board of Edu- cation, and the secretary of the Board of Education of the State of Ar- kansas; and the Regional Director of the Department of Health, Educa- tion, and Welfare.	Plaintiffs allege that the method of levying taxes and the rate of taxes among the several school districts in the State of Arkansas cause the wealth of respective districts to determine the quality of education and the quality of physical facilities available to schoolchildren in those respective districts in violation of the Fourteenth Amendment to the Constitution of the United States, and provisions of the Arkansas Constitution. It is further alleged that plaintiffs in these districts have been denied equal protection in that their children have been denied substantially equal public educational opportunities due to their geographic location within the district although they, as taxpayers, pay identically the same tax as other residents of the district.	Plaintiffs ask the court to declare the State financing system unconstitutional under the Fourteenth Amendment to the Constitution of the United States and unenforceable insofar as the Arkansas Constitution provides for a system of free allocation opportunities, that an injunction be granted against the collection of any tax or the issuance of any bond without the consent of the parents of the children are not afforded such educational opportunities therein, and that the court retain jurisdiction, affording the defendants and the State Legislature a reasonable time in which to develop an alternative financial structure.	Filed on Apr. 28, 1972, in the United States District Court, Western District of Arkansas, Harrison Division.
CALIFORNIA Los Angeles Serrano, et al. v. Priest, et al. Another school fi- nance case was	School children and their tax-paying parents from a number of Los Angeles County school districts.	Treasurer, Tax Col- lector, and Superin- tendent of Public Schools in the Coun- ty of Los Angeles; the Treasurer, Com- missioner of Educa-	Plaintiffs claim that California's system of education finance violates the United States and Federal Constitutions, in that it (a) Makes the quality of education a function of the wealth of the children's parents and neighbors, as measured by the tax base of the school district in which said children	Plaintiffs ask the court (a) to declare that they have been denied equal protection of the laws by the California school finance system, that their children are denied the U.S. and California Constitutions (b) to order the defendants to reallocate the	The case was dismissed by the lower State Court when it sustained the defendants' demurrer. The Cal-

filed in California (Sylvia v. Alaska-dero, San Francisco) but due to its similarity with the Los Angeles case, this decision was not to drop its prosecution.	roller, and Superintendent of Public Instruction of the State of California.	reside, and (b) Makes the quality of education for school age children in California, including Plaintiff-children, a function of the geographical accident of the school district in which said children reside, and (c) Fails to take account of any of the variety of educational needs of the several school districts (and of the children therein) of the State of California, and (d) Provides students living in some school districts of the State with material advantages over students in other school districts in selecting and pursuing their educational goals, and (e) Fails to provide children with substantially equal age, aptitude, motivation, and ability with substantially equal educational resources, and (f) Perpetuates marked differences in the quality of educational services, equipment and other facilities among the public school districts of the State as a result of the unequal apportionment of State resources in past years. (g) The use of the "school district" as a unit for the differential allocation of educational funds bears no reasonable relation to the California legislative purpose of providing equal educational opportunity for all school children within the State. (h) The part of the State financing scheme which permits each school district to retain and expend within that district all of the property tax collected within that district bears no reasonable relation to any educational objective or need. (i) A disproportionate number of school children who are Negro, Mexican, children with Spanish surnames, and children belonging to other minority groups reside in school districts in which a relatively inferior educational opportunity is provided.	funds available for financial support of the school system, including funds from property taxes, and (c) to restructure the finance scheme to provide equal educational opportunities and equal education to the State and, if defendants and the legislature fail to act, that the court regulate collection of property taxes and apportion school funds in satisfaction of the obligations of the state constitution to maintain a system of free public schools and the equal protection clauses of the U.S. and California Constitutions.	for intermediate state court of appeals affirmed, the dismissal. The California Supreme Court on Aug. 30, 1971, reversed. On Oct. 21, 1971, in an earlier opinion, the California Supreme Court returned the case "to the trial court for further proceedings." Citation: 487 P. 2d 1281.	The complaint was filed in the Otero County District Court for the State of Colorado on Sept. 3, 1971.
COL 08400 Otero County Elean Allan, et al. v. County of Otero, et al.	Property owners and parents of school children residing in East Otero School District.	Plaintiffs complain that the method for raising school revenues in Colorado is unfair and discriminatory in operation and effect, and constitutes a violation of the equal protection clause of the United States Constitution. Plaintiffs complain further that the Colorado School Foundation Act fails to provide equalization of the children for education and makes the quality of a child's education vary according to the wealth of his parents and neighbors in the particular community in which he lives.	Plaintiffs ask the court to declare that the local property tax is an unconstitutional infringement of their rights under the equal protection clause of the United States Constitution. Plaintiffs ask the court to enjoin the defendants from assessing, levying, or collecting local property taxes after Jan. 1, 1973.	Plaintiffs ask the court to declare that the local property tax is an unconstitutional infringement of their rights under the equal protection clause of the United States Constitution. Plaintiffs ask the court to enjoin the defendants from assessing, levying, or collecting local property taxes after Jan. 1, 1973.	Plaintiffs ask the court to declare that the local property tax is an unconstitutional infringement of their rights under the equal protection clause of the United States Constitution. Plaintiffs ask the court to enjoin the defendants from assessing, levying, or collecting local property taxes after Jan. 1, 1973.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
CONNECTICUT Jedliffe, et al. v. Berdon, et al.	Public school children and their parents.	Treasurer, Attorney General, Commis- sioner of Education of the State of Connecticut; Members of the Connecticut State Board of Education; Teachers, Tax Collectors, and Superintendents of Schools of the Towns of Darien and West Hartford.	Plaintiffs claim that the State of Connecticut's elementary and secondary school financing system violates the equal protec- tion and due process clauses of the Fourteenth Amendment to the United States Constitution by making the educational ex- penditures per child and the State authorized alternative educa- tional opportunities for each child a function of the wealth of the child's parents, school district, or some entity other than the State of Connecticut as a whole and thus deprives plaintiff children of equal educational opportunity.	Plaintiffs ask that a declaratory judgment be granted holding the elementary and secondary school financing system of the State of Connecticut to be in violation of the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution; that a permanent injunction be issued against the continued operation of the financing system; and that the court grant reasonable time to restructure the financing system so as to assure that the public expenditure for the education of any child and a child's access to alternative educational op- portunities to the extent of such public expenditures, no longer be a function of the wealth of school districts, parents, or any entity other than the State as a whole.	Case filed in the United States District Court for the District of Connecticut on Dec. 30, 1971, and is still pending.
FLORIDA Dade County Classroom Teachers' Association, Inc., et al. v. State Board of Education, et al.	Teacher associations whose mem- ber- ship consists of a large majority of classroom teachers employed in four urban counties.	State Board of Education, consisting of the Governor and his Cabinet, its Commissioner, and the Department of Education.	Plaintiffs allege that the school financing scheme for the State of Florida denies public school pupils and teachers in urban counties equal educational opportunities and that the scheme, by denying equal protection of the laws, and denying them adequate provision for a uniform system of free public school guaranteed by the Federal and State constitutions.	Plaintiffs ask the court to declare that the public school financing laws of the State of Florida are unconstitutional and enjoin the State Board of Education, as the children of plaintiffs, counties and other urban counties of due process under law, the equal protection of the laws, and an adequate provision for a uniform system of free public schools as guaranteed by the Federal and State constitutions; to enjoin the defendants from enforcing the provisions of such laws; and, upon the Legislature's failure by 1974 to amend existing laws or adopt new laws to provide equal educa- tional opportunity to all children, declare such a program of funding in effect.	Filed in the Circuit Court of the Seventh Judicial Circuit and for Leon County, Florida on Dec. 6, 1971, the case was dismissed by the trial court and is currently on appeal to the State Supreme Court.

FLORIDA
Hargrave et al. v.
Kirk et al. (on
appeal recap-
tured: Askew,
et al. v. Hargrave,
et al.)

Sixteen students
of Florida's public
schools and their
parents who are
also tax paying
property owners.
(The parents and
children reside in
seven counties.)

The State Board of
Education, consist-
ing of the Governor
and his Cabinet,
its Commissioner,
and the State's
comptroller.

The complaint charges that the State's "millage rollback" statute, which imposes a limit on the amount that counties can tax themselves for educational expenditures (a limit which pre-vents any county from passing a local voter approval, and which in fact had been passed in numerous counties after gaining local voter approval), violates the equal protection clause of the U.S. Constitution, because the statute is based by reference to a standard relating to the overall wealth of each county and cannot raise enough money to meet their educational needs under the statute, because, if they choose to raise locally an amount equal to or less than the statutory limit, they will not have enough funds (even with the State's foundation grant), and, if they try to raise locally the entire amount that they need, they cannot do so because their tax base is too low and the statute disqualifies them from receiving any State financial assistance from the foundation program.

Plaintiffs ask the court (a) to enjoin defend-ants from using the act of surpassing the statutory local limitation as grounds for withholding foundation grants, and (b) to declare the millage rollback statute null and void.

The case was dis-posed of by a single judge from the Fifth Circuit U.S. Court of Appeals reversed the dis-trict court's juris-dictional rulings and remanded with directions to convene a three-judge district court. The three-judge district court on May 8, 1970, declared that the millage rollback statute is unconstitutional as a violation of Equal Protection and enjoined any withholding under the statute. In the spring of 1971, the U.S. Supreme Court vacated the lower court's decision and re-manded the case for further pro-ceedings. The case was subsequently dismissed by plaintiffs. Cita-tions: 313 F. Supp. 944, 401 U.S.C. 476.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
GEORGIA Batista, et al. v. Cherry, et al.	Black residents and freshmen of an independent school system and parents of chil- dren attending an independent school system.	Superintendent of Dekalb County School System and other State and county officials.	Plaintiffs contend that the Georgia Minimum Foundation Program of Education Act of 1964 denies them the equal protection of the laws because, as black residents of an independent school sys- tem, they must bear a proportionately higher tax burden than taxpayers within the county school district and because their children receive proportionately less benefits than those in the county school system while paying proportionately more.	Plaintiffs ask the court for a declaration of their rights and an injunction against the continued operation of the challenged provisions of the Georgia Act.	On Feb. 2, 1972, a three-judge Federal court dis- missed the com- plaint holding that res judicata and anti-injunction provisions barred plaintiffs' action. The court stated further that had it reached the merits of the case, plaintiffs' claim of dis- crimination was without merit (distinguishing Serrano) in that plaintiffs were in a position to benefit from the superior taxable wealth of their school system and that allegations of disparities in funding were not based on facts were irrelevant. Citation: 338 F. Supp. 185.
IDAHOO Pocatello School District, Inc. v. et al. v. Legisla- ture, et al.	School districts, school children, and their tax- paying parents.	Superintendent of Public Instruction, Auditor, Treasurer, and Members of the Board of Educa-	Plaintiffs contend that, as a direct result of the Idaho school fi- nancing system, (1) substantial disparities exist among the dis- tricts of the State in the dollar amount available per pupil for public education and the educational opportunities afforded therein without any justification in terms of the educational	Plaintiffs ask the court to declare the Idaho school financing scheme unconstitutional under the Fourteenth Amendment of the United States Constitution and under the Idaho Constitution, to order defendants	Filed in late 1971 in the District Court of the Fourth Judicial District of the State of

tion of the State of Idaho; various county assessors, auditors, and treasurers.	needs or demands of the school children in violation of the equal protection clauses of the United States and Idaho Constitutions as well as provisions of the State Constitutions providing for the maintenance of a general uniform and thorough system of free public schools within the State, and (2) plaintiff parents are required to pay a higher tax rate than taxpayers in many other school districts while receiving the same or lesser educational opportunities afforded children in other districts.	to reallocate funds in a manner consistent with this holding, and to retain jurisdiction until the State legislature is a "turdied" a reasonable amount of time in which to comply with the court order.	Idaho, in and for the County of Ada, plaintiffs motion for summary judgment is set for argument on Nov. 6, 1972.
ILLINOIS Chicago McInnis, et al. v. Shapiro, et al. (Subsequently McInnis, et al. v. Oghrie, et al.)	High school and elementary school students attending school within four school districts of Cook County, Ill., and a corporate plaintiff, the Concerned Parents and People of the West Side.	Plaintiffs charge that the State acted unconstitutionally in creating an education finance system which results in plaintiff's school districts receiving per pupil expenditures "far below" those provided other districts. Plaintiffs allege that as a direct result of the method of financing public education, there are serious disparities in the quality of educational programs, facilities, and services and in the level of educational attainment achieved, in the different school district.	Plaintiffs ask that various Illinois legislation which provides for and permits the distribution of moneys "not based upon the educational needs of children" and resulting in unequal per pupil expenditures "be declared unconstitutional" and "a permanent injunction be granted."
ILLINOIS Chicago Gerald L. Shabro v. State of Illinois, et al.	A taxpayer and resident of the City of Chicago suing on his own behalf and behalf of all other persons in Illinois similarly situated.	Plaintiffs allege that the Illinois Constitution requires the State to provide an efficient, high quality, and free public education system, and that that provision of the Constitution is violated because the State is providing less than 50 percent of the total amount of funds necessary for financing public education in the State of Illinois.	A three-judge Federal district court dismissed the complaint filed in 1969 for failure to state a cause of action and for nonjurisdictionality. The U.S. Supreme Court in 1970 summarily affirmed the district court opinion without oral argument. Citations: 283 F. Supp. 327, 384 U.S.C. 322.
ILLINOIS Chicago Gerald L. Shabro v. State of Illinois, et al.	The State of Illinois and the State Superintendent of Public Instruction.	Plaintiffs ask the court to declare that the current system of financing education in the State of Illinois is in violation of the State's responsibilities under the Illinois Constitution that the State has failed to assume the "primary responsibility" for financing public education as required by the Illinois Constitution.	Filed on Oct. 5, 1971, in the Cook County Circuit Court, the case has been consolidated with Base. Plaintiffs' motion for summary judgment has been denied, and the case is currently being appealed to the State Supreme Court.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
ILLINOIS Niles Nicholas v. Blase, et al. v. State of Illinois, et al.	A taxpayer and his daughter, a student in public schools, district 207 of Cook County, Illinois.	The State of Illinois and the Super- intendent of Public Instruction of the State of Illinois, Cook County and Public School Dis- trict No. 207.	All plaintiffs allege that, pursuant to its Constitution, the State of Illinois is obliged to provide a free and efficient system of public education. Plaintiffs charge that the State is paying higher taxes to the education of children in certain districts than it is to taxpayers in wealthier school districts. Plaintiff-student alleges that the amount spent on her public education is less than that spent for students in other districts of the State with higher assessed valuation, and that she is therefore denied a free and equal educational opportunity as required under the Illinois and United States Constitutions.	Plaintiffs ask the court (a) to declare unconstitutional those sections of the Illinois law which shift to local school districts the responsibility for financing public education throughout the state; (b) to declare that, in Illinois, there is not an efficient public education system of high quality as required by the State constitution; (c) to declare that the State has failed to provide to local school districts a sum of money necessary to meet the minimum standards of education as defined by contemporary standards.	Filed in the Circuit Court for Cook County in September 1971, the Federal court's jurisdictional claim was dropped following the filing of the Martwick suit. Subsequently, the case was consolidated with the Sharboro suit. Plaintiffs' motion for summary judgment was denied, and the Federal court's opinion is currently being appealed to the Illinois State Supreme Court.
ILLINOIS Martwick, et al. v. Illinois, et al.	Cook County Super- intendent of Schools, school children and their taxpaying parents.	The State of Illinois; Superintendent of Public Instruction, Treasurer, and Auditor of Public Accounts of the State of Illinois.	Plaintiffs charge: (a) that the school financing scheme of the State of Illinois denies some children attending public schools within Cook County school districts educational resources and opportunities substantially equal to those enjoyed by children attending public schools in other districts of Cook County and the State of Illinois in violation of the Equal Protection Clause of the United States and Illinois Constitutions by failing to apportion the Illinois Common School Fund's State tax to equitably distribute educational resources available to students within school districts throughout Cook County and the State of Illinois through equitable distribution of State monies and those differences in educational resources resulting from disparities in the amounts produced by the taxing of property within the school districts; and (b) that the defendants are distributing State provided funds from State revenues amounting to less than 50 percent of the total amount necessary for financing the public elementary and secondary educational system in the State of Illinois contrary to the provisions of the Illinois Constitution which places upon the State the primary responsibility of financing education in the State.	Plaintiffs ask the court (a) to declare unconstitutional the Illinois school finance system as being in violation of the equal protection of the laws of the United States Constitution and the Constitution of the State of Illinois; (b) to enjoin the current operation of the present scheme; (c) to afford the Illinois General Assembly a remedy to provide equitable distribution of Illinois and the defendants must provide and distribute not less than 50 percent of the funds needed to provide and maintain public elementary and secondary educational institutions and services in the several school districts within Illinois.	Filed in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, the case was removed to Federal Court in March 1972. Plaintiffs will be requesting a three-judge panel and plan to file a motion for summary judgment by September 1972.

ILLINOIS Bentchild, et al. v. Bakalis, et al.	A student, his tax- ing parent, and the parent of a child in High School Dis- trict No. 113.	Superintendent of the State of Illinois and the Superin- tendent of the Educational Service Region, Lake County, Illinois.	Plaintiffs allege that they are denied the equal protection of the United States Constitution and the Fourteenth Amendment of the State of Illinois in that the Illinois school finance system invidiously discriminates on the basis of whether a school district has been organized as a unit or co-terminus high school and grade school dual district. Under the challenged system, the State equalization quota apportions a territory as a unit district is greater than the quota apportioned to a territory if it is organized as a dual district. In a dual district, a unit of 1/74 percent of their territory's assessed valuation is added to the territory, whereas, if the same territory were organized as a unit district, only 1.08 percent of that assessed valuation would be deducted.	Plaintiffs ask the court to declare the dis- criminatory provisions of the Illinois School Code unconstitutional and void under the United States and Illinois Con- stitutions, to enjoin the defendants from further application of those provisions, and to apportion the common school fund on an equitable basis.	Filed in November 1971 in the United States Dis- trict Court for the Northern District of Illinois, Eastern Division. The case is set for trial on Aug. 17, 1972.
ILLINOIS Tax Reform League v. State of Illinois, et al.	Taxpayers organiza- tion.	State of Illinois, Superintendent of Public Instruction, Auditor, and Treasurer of the State of Illinois.	Plaintiff alleges that the Illinois system of school finance with its reliance on the property tax as its revenue source is unconsti- tutional under the Fourteenth Amendment of the United States Constitution because it invidiously discriminates (a) between schoolchildren the amount of money spent on their education depending on the property values of their neighborhood, (b) against persons on social security who receive income therefrom has not increased proportionately with the rise in their property taxes, and (c) against property owners and renters who do not have children in the public schools but who must still pay taxes for public education.	Plaintiffs ask the court to declare the Illinois system of financing schools and education from property tax revenues unconstitutional under the Fourteenth Amendment to the United States Con- stitution and to order that the defendants refrain from operating under such a system.	Filed on Jan. 24, 1972 in the United States District Court for the Northern District of Illinois, Western Division, Freeport, Illinois.
INDIANA Bartholomew County et al. v. Edgar Whitcomb, et al.	School children from public schools in Bartholomew County, Indiana and their property taxpaying parents.	The Governor, Auditor, and Treasurer of the State of Indiana, The Superintendent of Public Instruction for the State of In- diana; the State Board of Tax Com- missioners; the Bar- tholomew Consoli- dated School Cor- poration; the Super- intendent of Bar- tholomew Schools; and the Auditor and Treasurer of Bar- tholomew County.	Plaintiffs allege that the Indiana constitution requires the State to provide a uniform system of common schools and a uniform and equal rate of assessment and taxation. Plaintiffs allege that the current system in effect in Indiana for raising and distributing monies for public education violates the above two requirements of the Indiana Constitution and the equal protection clauses of the Indiana and United States Constitution.	Plaintiffs ask the court (a) to declare that the Indiana statutes for the purpose of State aid for public education violate the Indiana and United States Constitutions and (b) to temporarily and permanently enjoin the defendants from collecting property taxes for public education.	Filed in the Super or Court of Marion County, Indiana in November 1971.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
INDIANA, Indianapolis Spilly, et al. v. State Board of Tax Commissioners, et al. (captioned Indianapolis v. State Board of Tax Commissioners, et al.).	Public school chil- dren and their parents from three Indi- ana counties.	The State Board of Tax Commissioners and the Auditor and Treasurer of the State of Indiana.	Plaintiffs claim that the current financing structure established by the State of Indiana to fund its public schools makes the quality of education a function of the wealth of children's parents and neighbors; it makes the quality of education a function of the geographical accident of which school district reside in; it fails to take account of educational needs; and it fails to provide children of substantially equal age, aptitude, motivation, and ability with substantially equal educational resources.	Plaintiffs ask the court (a) to declare that the State system for financing education violates both the equal protection clause of the United States and Indiana Consti- tution and the Indiana Constitutional provision, which requires the State to provide a general and uniform system of public schools; (b) to retrain the de- fendants from administering and enforce- ing the school finance system in such a way so as to violate the Indiana and United States Constitutions (however, should the defendants fail in that task, the plaintiffs ask the court to restrain the administrators from such actions); (c) to require the defendants to restructure public education in a manner so as not to violate the Indiana and United States Constitutions; (d) to allow the defendants and the Indiana legislature a reasonable time to develop a constitutional financing structure; however, should the defend- ants fail to do so, the court is asked to develop its own constitutional financing structure.	Filed on June 16, 1971, in the Superi- or Court for Marion County, the case is presently in the Circuit Court of Johnson County and is set to go to trial on Aug. 14, 1972.
KANSAS William Mergen- rater, et al. v. State of Kansas, et al.	Public school children and their property taxpaying parents from Shawnee and Cherokee Counties, Kansas.	The State of Kansas; the State Board of Education and its Commissioner; the Comptroller of the State Department of Administration for the State of Kansas; and the Treasurer of the State of Kansas.	Plaintiffs allege that the system for financing public schools in the State of Kansas (a) makes the quality of a section a function of the wealth of the children's parents and neighbors; (b) makes the quality of education for school children in Kansas the func- tion of a geographic accident of the school district in which they live; (c) fails to take into account the variety of educational needs of the school districts in the State of Kansas; (d) fails to provide children of substantially equal age, aptitude, motivation and ability with substantially equal educational resources; and (e) perpetuates marked differences in the quality of educational services received by children of different wealth levels in the public districts in Kansas. Plaintiffs claim that this financing system violates the equal protection clause of the United States Constitution. The plaintiff-taxpayers allege that they are re- quired to pay a higher tax rate for school purposes than tax- payers in wealthier school districts in order to provide the same or less per pupil expenditures. Plaintiff-taxpayers claim that this inequity violates the equal protection clause of the United States Constitution.	Plaintiffs ask the court to declare that they have been denied equal protection of the laws by the current school financing system and that the system is violative of the U.S. Constitution. Plaintiffs ask the court to retain jurisdiction of the action, affording the Kansas legislature a reason- able time to restructure the school financ- ing system so as to ensure that the quality of education will no longer be a function of the wealth of school districts.	Case filed in the United States District Court for the District of Kansas in October 1971.

KANSAS, Johnson County, Caldwell, et al. v. State of Kansas, et al.	The Kansas Federation of Taxpayers, Inc. and public school children and their taxpayers from Johnson County, Kansas.	The State of Kansas; the Attorney General and the Acting Director of Property and Taxation; the State Board of Education; the Treasurer and Clerk for Johnson County; the School District and its Board of Education.	Plaintiffs allege that under the State's system for financing public schools, 65% of the total Kansas educational revenues were raised from local property tax from school districts which have widely varying amounts of taxable wealth per pupil. Plaintiffs claim that this system violates their rights to equal protection because it makes school expenditures a function of the wealth of school districts in which plaintiffs reside. Plaintiff-taxpayers claim that the State of Kansas is prohibited by the U.S. and Kansas Constitutions from collecting property taxes not based on uniform and equal rates of assessment. As a result of the system tax the plaintiff-taxpayers claim that they are taxed more heavily upon some value property than are persons in other school districts in order to provide the same educational opportunity. Plaintiff-taxpayers further claim that they are suffering injury from the Kansas system for financing schools because it subjects persons who happen to own property to a greater tax than those who do not, without taking into consideration the public services to be financed.	Plaintiffs ask the court to declare that the Kansas system for financing public schools denies them equal protection of the laws under the U.S. and Kansas Constitutions and ask the court to enjoin the operation of the system insofar as its operation makes spending for education a function of wealth and ownership of property.	Filed in early December 1971 in the District Court of Johnson County, Kansas, the case recently had a hearing and is currently under submission to the judge. A decision is expected shortly.
KANSAS, Wiley, et al. v. State of Kansas, et al.	Taxpayers.	State of Kansas; Attorney General; State Board of Education; Director of Property Valuation of the State of Kansas; Treasurer and Clerk of Leavenworth County; Unified School District No. 449 and members of its Board of Education.	Plaintiffs allege that the State school financing system in connection with general obligation bonds issued to construct school facilities violates both the equal protection clause of the Fourteenth of the United States Constitution and provision of the Kansas Constitution inssofar as it arbitrarily and without any compelling State interest subjects plaintiffs to taxation based on the wealth of the school district in which plaintiffs reside and as a result of the plaintiffs owning property subject to such tax for school construction upon the property they own more heavily than other persons upon the same property in order to provide the same education as exists in other districts within the State.	Plaintiffs ask the court to declare that plaintiffs have been denied the equal protection of the laws of the United States and the State of Kansas by the school financing system and to enjoin the operation of the system insofar as the operation thereof makes spending a function of wealth and the ownership of property the basis of funding.	Filed in the United States District Court for the District of Kansas on May 17, 1972.
KENTUCKY, Baker, et al. v. Strode, et al.	Schoolchildren and their taxpayers.	Members of the Boards of Education of Daviess County and the Independent School District of Owensboro; Superintendents of Public Schools in Daviess County and the Independent School District of Owensboro; Members of the State Board of Education; and the State Superintendent of Public Instruction.	Plaintiffs allege that the State "millage rollback" statute fixing the amount of money which local boards can raise through local property taxes has prevented Kentucky's local school districts from improving their educational standards through local taxation by arbitrarily denying to the various district boards of education the right to assess, collect, and use taxes essential to the maintenance of good public schools and to citizens, taxpayers, and students the educational facilities and quality of instruction which their local boards deemed proper for their children in violation of the Fourteenth Amendment of the United States Constitution and provisions of the Kentucky Constitution.	Plaintiffs ask the court to declare the State's "millage rollback" legislation null and void, and of no effect and to enjoin defendants from enforcing or abiding by such.	Filed in the United States District Court for the Western District of Kentucky on Jan. 26, 1971, a hearing was held before a three-judge court on July 18, 1972 and is currently under submission.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
KENTUCKY Nunnely, et al. v. Miller, et al.	Members of the Board of Educa- tion of Louisville, Kentucky.	Members of the Board of Aldermen of Louisville, Kentucky.	Plaintiffs argue that the Kentucky "rollback" legislation, which placed a tax on property at the rate of 1.5 percent, is unconstitutional under both the Fourteenth Amendment of the United States Constitution and provisions of the Kentucky Constitution because it operates as special and local legislation and, thus, denies them the equal protection of the laws. Plaintiffs argue further that section 172 of the Kentucky Constitution, which provides that all property not exempted from taxation must be assessed at its fair cash value; because it perpetuates assessments which did not conform with section 172 in 1965.	Plaintiffs ask the court for a declaration of their rights and for a temporary injunction against the defendants to prevent the levy of taxes in excess of the maximum rate authorized by the challenged legislation.	The Jefferson County Circuit Court, Kentucky, Third Division declared the "rollback" legislation unconstitutional and granted the injunction. On June 18, 1971, the Court of Appeals reversed the lower court decision stating that the legislation did not prevent school districts from selecting as high a tax rate as it chose by popular vote and that levy rates between taxing districts need not be uniform. On Nov. 9, 1971, the United States Supreme Court denied certiorari. Citations: 468 S. W. 2d 298, 404 U.S.C. 941.
MAINE Lahaye, et al. v. State of Maine, et al.	Schoolchildren and their taxpaying parents.	State of Maine; Treas- urer, Attorney Gen- eral, Commissioner of Education, and Members of the Edu- cation Board of the State of Maine. Mem- bers of the Board of Directors of various school districts; and	Plaintiffs allege that they are suffering serious inequality and injury in regard to a fundamental interest (the interest in educa- tion) by virtue of State created variations in per pupil expendi- tures caused by variations in school administrative amount wealth and the financing system in violation of the equal pro- tection clause of the Fourteenth Amendment and the Consti- tution of the State of Maine. Plaintiffs request that the State for plaintiffs, public education a function of the wealth of the school administrative unit in which plaintiffs reside.	Plaintiffs ask the court to declare that they have been denied the equal protection of the laws of the United States and the State of Maine by the State financing system, to order the defendants to refrain from operating the present system, and to order the defendants to take such steps as are reasonable in which to take all steps reasonably feasible to restructure the financing scheme.	Filed on Jan. 17, 1972, in the Su- preme Court. Kennebec, Maine. The case is still pending.

treasurers, tax collectors, and assessors of various municipalities.	Public school children and their property taxpayers residing in the City of Baltimore.	The Governor, Comptroller, and Treasurer of the State of Maryland; the Mayor, Director of Finance, and City Council of the City of Baltimore.	Plaintiffs allege that of the funds generated by the State system for financing public schools in the State of Maryland, approximately 59% are raised by localities. Plaintiffs further allege that a disparity exists in the ability of localities to finance their share of the cost of education. There is a direct result of this disparity in the quality of education. Plaintiffs allege that the formula for computing State aid favors wealthy localities over poor localities. Plaintiffs claim that as a direct result of this State system for financing education, (a) the quality of public education is made a function of the wealth of children's parents and neighbors; (b) the quality of education is made a function of the geographical accident of the wealth of the locality in which school children reside; (c) no account is taken of the different educational needs of the various localities and the school children residing therein; (d) children in some localities are provided with material educational advantages over children in other localities which directly affect their educational opportunities; (e) children of substantially equal aptitudes, intelligence, and ability are afforded unequal educational resources; (f) a disproportionate number of children of low income and/or black families residing in Baltimore City, are, by virtue of the State system for financing schools, denied equal educational opportunity with other children in the State. Plaintiff-taxpayers claim that the State's system for financing schools requires them to pay a higher tax than similar taxpayers in other localities in order to receive the same or lesser educational opportunities for their children.	Plaintiffs claim that the Massachusetts statutory scheme for financing primary and secondary education results in wide disparities in the financial resources available per pupil in public schools. Plaintiffs claim that the Massachusetts public schools and the rate of taxation between districts as a direct result of the reliance on the Massachusetts scheme upon local property taxation and that the selection, without regard to variations in equalized valuation per pupil, of local cities and towns as the taxing unit violates the Fourteenth amendment of the United States Constitution.	Governor, Commissioner of Education, Treasurer, and Auditor of the Commonwealth of Massachusetts.	Schoolchild and his taxpaying parent.	Governor, Commissioner of Education, Treasurer, and Auditor of the Commonwealth of Massachusetts.	Plaintiffs ask the court for a declaration that the Massachusetts system providing for the financing of primary and secondary education violates the Fourteenth Amendment of the United States Constitution and is accordingly null, void, and of no effect.	Plaintiffs ask the court for a declaration that the financing of primary and secondary education violates the Fourteenth Amendment of the United States Constitution and is accordingly null, void, and of no effect.	Complaint filed in the United States District Court in the District of Massachusetts in January 1972 and is still pending.
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LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
MICHIGAN, Detroit Board of Education of the School District of the City of Detroit, et al. v. The State of Michigan and Allison Green, its Treasurer.	Detroit School Board, students and their parents.	State of Michigan and its Treasurer.	Plaintiffs allege that the finance system fails to allot the school districts in which they reside educational resources and educational opportunities substantially equal to those provided by many other school districts. Plaintiffs allege that the system is deficient in failing to relate to the district variations in educational needs, quality of existing educational facilities, and levels of educational costs and expenses (i.e., for school construction and salaries).	Plaintiffs ask that execution of the "State Aid Act" be enjoined so that State funds be reapportioned so as to provide substantially equal educational opportunities for all children in the State.	Filed in 1968, the case was dismissed for lack of prosecution. The case was filed in early 1972 and is currently pending.
MICHIGAN, Ingham County, William G. Milliken, et al. v. Allison Green, et al.	The Governor and the Attorney General of the State of Michigan.	The Treasurer of the State of Michigan and three school districts having a higher State equalized valuation of taxable property per pupil and higher expenditures per pupil than most other districts in the State of Michigan.	Plaintiffs allege that the Michigan constitution requires the State legislature to maintain and support a system of free public schools, and that the operation of public schools in Michigan are financed in part from taxes on real and personal property, and that the amount of revenue per pupil derived by the State district from property taxes for school purposes is dependent on the wealth of the school district as measured by the State equalized valuation of taxable property per pupil, and that the effect of this system is to produce substantial disparities among school districts in per pupil expenditures. Plaintiffs claim that these substantial disparities deny equal educational opportunity to the children enrolled in school districts with lower expenditures, and thus it invidiously discriminates against them in contravention of the guarantees of the equal protection clauses of the Michigan and United States Constitutions.	Plaintiffs ask the court to declare that present system of financing public schools in Michigan to be unconstitutional as violative of the equal protection clauses of the Michigan and United States Constitutions.	Filed in the Michigan Circuit Court for the County of Ingham in October 1971, the Circuit Court on May 8, 1972, filed its Findings of Fact with the State Supreme Court and referred to the State Supreme Court the two questions which one of the plaintiffs, William G. Milliken, acting as Governor, had asked the State Supreme Court be certified to it for immediate consideration and

determination. The questions, challenging the validity of Michigan's system of school districts under the equal protection clauses of both the Michigan and United States Constitutions, were argued in June. A decision is expected shortly.

Filed on Oct. 27, 1971 in the Michigan Circuit Court for the County of Ingham, the Supreme Court of Michigan refused to certify the case at the time it granted certification in *Milliken v. Green*. It remains pending in the Circuit Court.

The plaintiffs ask the court (a) to declare the present State aid system for financing education to be unconstitutional because it fails to equalize the yield of property tax levies for school districts; (b) to require the defendants to provide a new school finance plan which would be free of constitutional defects, while preserving the integrity of local school districts and the option of local tax payers to provide quality of education for their children; (c) to prohibit the State comptroller from allocating any funds pursuant to the present State aid system after July 1, 1972; and, (d) in the event that the State fails to respond constitutionally before July 1, 1972, to have the court restructure the system along constitutional lines.

Plaintiffs allege that the State of Michigan's school finance plan is unfair in that it causes substantial financial disparities among school districts in the amount of revenue per pupil available for each district's educational program, that there are wide disparities among the districts in their assessed valuation per pupil, and that the heavy reliance upon local property taxes by local school districts results in substantially inferior educational opportunities for those children living in relatively poorer school districts. Plaintiffs claim that this school financing scheme fails to meet the constitutional requirements of the Michigan and United States Constitutions in that (a) it makes the quality of education a function of the wealth of the children's parents; (b) it makes the function of education for school children in Michigan dependent upon the geographic accident of the school district in which we live; (c) fails to take into account the variety of educational needs of the school districts in the State of Michigan; (d) fails to provide children of substantially equal age, aptitude, and motivation and ability with substantially equal educational resources; and (e) perpetuates marked differences in the quality of educational services, equipment, and other facilities which exist among the public districts in Michigan.

The Governor, Attorney General, Treasurer and Comptroller of the State of Michigan; and the Superintendent of Public Instruction of the State of Michigan.

Public school children and their taxpaying parents who live in the Michigan counties of Macomb and Oakland.

MICHIGAN, Ingham County
George Montgomery, II,
et al. v. William G. Milliken, et al.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
MINNESOTA Donald Van Dusart, et al. v. Roland F. Hat- field, et al.	Students in the public schools of White Bear Lake School District No. 624, Ramsey County, Minnesota, and their parents and guardians who directly or in- directly support public education in the district through local tax- ation.	The Auditor and Treasurer for the State of Minnesota; the Commissioner of Taxation for the State of Minnesota; the Commissioner of Education of Min- nesota, and the Com- missioner of Administration for the State Board of Education of Min- nesota Board of Education; the Independent School District No. 624; and the Treasurer and Auditor of Ram- sey County, Min- nesota.	Plaintiffs allege that the system for financing public education in Minnesota fails to meet the minimum requirements of the equal protection clause of the United States Constitution in that it makes the quality of education a function of the wealth of the children's parents and neighbors; makes the quality of educa- tion a function of the geographical accident of the per pupil assessed valuation of a school district; fails to take account of the variety of educational needs of school children; provides over students living in some school districts with material advantage of substantially equal age, aptitude, motivation and ability with substantially equal educational resources; and perpetuates marked differences in the quality of educational services and equipment in other facilities which exist in public school dis- tricts in Minnesota; and requires taxpayers residing in relatively poor school districts to pay higher taxes on comparable property than taxpayers in wealthier school districts in order to achieve the same or lesser expenditures per pupil.	Plaintiffs ask the court to declare the State financing system void as being repugnant to the equal protection clause of the Four- teenth Amendment of the U.S. Constitu- tion and request the court to retain juris- diction over the case. Defendants and the legislature a reasonable time to reintro- duce the financing scheme so as to insu- re that the quality of public education will be no longer a function of the wealth of school districts; and should the legisla- ture fail to do so, plaintiffs ask the court to restructure the financing system in a constitutional manner.	Filed in U.S. District Court for the Dis- trict of Minnesota, Third Division, in late September, 1971. Defendants subsequently moved to dismiss the lawsuit and on Oct. 12, in a decision written by Judge Miles W. Lord, the de- fendants motion to dismiss was denied. In early December, plain- tiffs dismissed their lawsuit, with- out prejudice, be- cause they be- lieved that the State would school aid for- mula (passed by the legislature on Oct. 30, 1971), while not meeting the "strict con- stitutional stan- dard set forth in the Court's Oct. 12 memorandum... it appears that [it] is probably likely to meeting the constitutional standard of fiscal neutrality than the previous statute..." C- tation: 334 F. Supp. 870.

MINNESOTA The Minnesota Federation of Teachers and the Minneapolis Federation of Teachers, Local Teachers, et al. v. Board of Education, et al.	The Auditor and Treasurer of the State of Minnesota, the State Board of Education and its Commissioner; the Auditor and Assessor for Anoka, Carlton, and Hennepin Counties.	Plaintiffs allege that the scheme of taxation for school financing in the State of Minnesota enables some districts to spend substantially more money per pupil while levying substantially lower taxes than other school districts with smaller taxable bases and that plaintiffs, residents of districts with smaller per pupil tax bases, are therefore denied equal protection of the law of Minnesota and the United States.	Plaintiffs ask the court to declare that the Minnesota public school financing scheme violates plaintiffs' rights to (a) equal protection of the law and is therefore unconstitutional; and (b) to a uniform system of public education as established by the Minnesota Constitution.	Case filed in U.S. District Court for the District of Minnesota, Fourth Division on Sept. 2, 1971. The defendants moved to dismiss, and the court on Oct. 12, 1971, after consolidating this cause with the Van Duzart's case (as noted above), denied the State's motion to dismiss. Plaintiffs have dismissed their action in the light of the Minnesota legislature's action on Oct. 20 which substantially increased the State's share of public education expenses.
MINNESOTA Minnesota Real Estate Taxpayers Association, et al. v. State of Minnesota, et al.	The State of Minnesota, the Governor, Treasurer, and Auditor of the State of Minnesota; the Board of Education of Minnesota and its Commissioner, et al.	Plaintiffs allege that the equal protection clause of the U.S. Constitution and the fundamental law of the State of Minnesota require the State to provide equal education to aid children and to impose a substantially uniform burden upon all taxpayers; moreover, the State is required by its own Constitution to provide a thorough and efficient public schools. Plaintiffs assert that education is a fundamental interest. And plaintiffs claim that the State has created a system of education which is unconstitutional and discriminatory against the quality of education of children and neighbors; (b) it makes the quality of education a function of the wealth of educational districts; (c) it makes the quality of education a function of the geographical location of the school district in which they live; (d) it fails to take into account the variety of educational needs of the school districts in the State of Minnesota; (e) it fails to provide children with substantially equal age, aptitude, motivation and ability with substantially equal educational resources; (f) it perpetuates marked differences in the quality of services, equipment and other facilities which exist among public districts in Minnesota. Plaintiffs-taxpayers claim they are required to pay a higher tax rate for school purposes than are taxpayers in wealthier school districts in order to provide the same or less expenditures per pupil.	Plaintiffs ask the court to declare that the Minnesota public school financing scheme violates plaintiffs' rights to (a) equal protection of the law and is therefore unconstitutional and void. Plaintiffs further request that the defendants be temporarily and permanently enjoined from allocating public monies for the support of public education unless and until that system is restructured in a manner so as not to violate the equal protection clause of the U.S. Constitution and articles 8 and 9 of the Minnesota State Constitution. Plaintiffs also ask the court to grant jurisdiction (upon granting the interim injunctions as requested), pending action by the Minnesota State Legislature to restructure in a constitutional manner the method for financing schools in the State of Minnesota.	Same as Minnesota Federation of Teachers case, except that plaintiffs have not dismissed their action.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
MISSOURI Stencer, et al. v. Mallory, et al.	Missouri school- children attending public elementary and secondary schools, their taxpaying parents, persons renting dwelling within school districts and indirectly supporting public education, and teachers.	Commissioner of Education, Director Treasurer, Director of the Department of Revenue, and the Board of Edu- cation of the State of Missouri; School District of Kansas City, Missouri and employees thereof.	Plaintiffs allege that the State financing scheme makes the ex- penditure for every child's public education a function of the taxable wealth per pupil of the school district and thus creates disparities in district wealth, taxing, and expenditure in violation of the equal protection clause of the Constitution of the United States. Plaintiffs further allege that the failure of voters to pass three separate tax levies has resulted in a school budget calling for the elimination of vital programs and services still provided for in other districts in violation of the equal protection clause of the Fourteenth Amendment of the United States Constitution.	Plaintiffs request the court to declare the Missouri financing system void and with- out force or effect as repugnant to the equal protection clause of the Fourteenth Amendment to the United States Con- stitution, to afford the legislature a reasonable amount of time in which to restructure the financing scheme so as to assure that the quality of public edu- cation measured by spending per pupil no longer will be a function of the wealth of school districts, parents or any entity other than the State, and to enjoin the defendant school district from eliminating any of its programs as proposed.	Filed in the United States District Court for the Western District of Missouri, Western Division in January 1972, the case was dismissed on January 24, 1972, on the ground that the abven- tioned doctrine applied and that relief should be sought in a State forum.
MISSOURI Independence Richard W. Troeh, MD, et al. v. William E. Robinson, et al.	Schoolchildren and their property taxpaying parents, all of Independ- ence, Missouri.	The Attorney General and treasurer for the State of Missouri; the State Board of Education and the Board's Presi- dent; the State and Secretary of the Department of Revenue; the Inde- pendence School Districts; the Treas- urer and the Col- lector of Revenue for Jackson County, Missouri.	Plaintiffs allege that the State constitution requires the State Office of Education to maintain a free system of public secondary and elementary education and that in maintaining said system the State is required by the U.S. Constitution to discharge its re- sponsibilities on substantially equal basis for all children, and that in spite of these requirements, the defendants have created a system for financing public education which prevents equal education opportunity substantially equal to those enjoyed by children in school districts that are poorer than the plaintiffs' dis- trict. Plaintiffs claim that the State law requiring a minimum of 180 school days in order for local districts to qualify for State aid discriminates against poor school districts.	Plaintiffs ask the court to declare the State system of financing public education to be unconstitutional in that it creates sub- stantial disparities among the school districts as related to the amounts of revenue available for each student. Plaint- iffs ask the court to declare that the financing that has been denied equal protec- tion under the State Constitution and that the law is void. Plaintiffs further ask that the defendants be ordered to reallocate pub- lic monies available for education in a manner so as not to violate the equal pro- tection provision of United States Consti- tution and the fundamental law and Con- stitution of Missouri. Plaintiffs further ask that the court retain jurisdiction of the action and to request the legislature to take, within a reasonable time, all steps reasonably feasible to make the school financing system comply with the U.S. and Missouri Constitutions. Plaintiffs fur- ther ask the court direct the State Legislature to restructure the State edu- cating scheme so as to provide equal educa- tional opportunity. Plaintiffs lastly ask the court to declare unconstitutional the Missouri statute requiring a specified number of school days to qualify for State aid.	Complaint filed in Missouri Circuit Court for the Six- teenth Judicial Circuit on Nov. 10, 1971.

NEW HAMPSHIRE
Birch, et al. v.
State of New
Hampshire, et al.

Schoolchildren, their
parents, and a
professional
teacher organi-
zation

State of New Hamp-
shire; Attorney
General, Treasurer,
and Commissioner
of Education of the
State of New Hamp-
shire; Tax Collector
of the Town of
Epsom; Treasurer
of the Epsom School
District and Super-
intendent of Schools
of Supervisory
Union No. 53.

Plaintiffs allege that the State of New Hampshire, by establishing a system of finance for its public schools which makes the ex-
penditure for every child's public education a function of the
taxable wealth per pupil of the school district in which he resides,
has violated both the equal protection clause of the Fourteenth
Amendment of the United States Constitution and the Constitu-
tion of the State of New Hampshire.

Plaintiffs ask the court to declare that they
have been denied the equal protection of
the laws of the United States and New
Hampshire by the financing system for
public education, to issue a permanent in-
junction restraining the defendants from
operating the present financing system
except so long as necessary to effect an
orderly transition to a valid system for
financing schools, and to afford the State
Legislature a reasonable time in which to
restructure the financing scheme as re-
quired by the equal protection clause of
the Fourteenth Amendment to the United
States Constitution and the fundamental
law and Constitution of New Hampshire.

Filed in the United
States District
Court for the Dis-
trict of New
Hampshire in
January 1972, the
case was set for
trial but has been
delayed pending
the outcome in
Rodriguez.

NEW JERSEY, Jersey
City
Robinson, et al. v.
Cauli, et al. New Jersey
A public school
complaint focusing
on the problems
of Newark, but
apparently no
action was taken
on it.

The Jersey City
Mayor, members
of the City Coun-
cil, the Board of
Education and
the Board of
Examiners
student of the
Jersey City public
schools and the
student's parent
(who is also a
resident of
Jersey City); ten
taxpayers from
Jersey City's
county and a
single taxpayer
from another
county in New
Jersey.

New Jersey's Governor,
Treasurer, Attorney
General, Commis-
sioner of Education,
the New Jersey
Senate (and its
president); the New
Jersey General
Assembly (and its
speaker).

Plaintiffs charge in a 16-count complaint that the State's system
for financing public education is unconstitutional, because it
makes the quality of education depend on the wealth of each
district and not the State; because it places an unequal tax
burden on the property owner who lives in low property value
districts; because the public officials in these poorer districts
are unable to provide equal educational opportunity; because the
minimum educational needs are not being met; because the
delegation to the districts to run the schools are not being main-
tained; because the standards, as required by the State Con-
stitution, are not being maintained; because school districts are
deprived of the power to spend what they want on education; and because
the current system promotes racial discrimination.

Plaintiffs ask the court, among other things,
to declare the present educational finance
scheme unconstitutional and to order the
defendants to restructure the scheme in a
manner not violative of the United States
and New Jersey Constitutions. Further,
they ask the court to order the defendants
to change the boundary lines of the dis-
tricts in a way that will equalize the
amount of tax base per student and that
will eliminate the complained of dis-
crimination. Finally, the plaintiffs ask the
court to declare that the State's real
estate tax is unconstitutional to the extent
it is used for public school support, and
to direct the defendants to enact laws
equalizing those taxes on a State-wide
basis.

Filed in the Superior
Court of Hudson
County, New
Jersey in early or
mid-1970s, the case
was held in late 1972.
On Jan. 19, 1972,
the court held the
New Jersey
school finance
system denied
plaintiffs the
equal protection
of the laws under
both the State and
Federal Constitu-
tions and violated
the education
clause of the
State Constitution.
An appeal has
been taken to
the New Jersey
State Supreme
Court; briefs
were submitted
this summer and
oral arguments
are set for the
fall. Citation: 287
A. 2d 187.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
NEW YORK, Westchester County, Andrew Spano, et al. v. Board of Education of Lakeland Central School District No. 1.	A property owner and taxpayer, who lives in Westchester County.	The Lakeland School District; the town of Yorktown; the Attorney General, Comptroller, and Commissioner of Taxation and Finance for the State of New York; the State of New York; and the Commissioner of the New York Education Department.	Plaintiff alleges that school districts, such as his, with small tax bases, cannot levy taxes at a rate sufficient to produce the revenue that more affluent school districts reap with minimal tax efforts. Plaintiffs claim that this imbalance violates the constitutional rights of school children to equal protection under the law. Plaintiffs further claim that the State school finance procedure is unconstitutional in that it requires him to pay proportionately more than his fair share of the burden for supporting education.	Plaintiffs ask the court to declare that the State procedure requiring villages, towns and cities, to raise necessary money for education in their localities violates the equal protection clause of the United States Constitution.	Filed in October 1971, the Supreme Court for the State of New York, County of Westchester found McLinn and Burrows to be controlling while dismissing the petition and granting Serrano and Van Duzette when it dismissed the case on January 1972. Citation: 328 N.Y.S. 2d 229.
NEW YORK Thompson, et al. v. The State University of New York, et al.	Schoolchildren and their parents.	The University of the State of New York, Commissioner of Education of the State of New York, Comptroller of the State of New York, Commissioners of Taxation and Finance of the State of New York, and the Attorney General of the State of New York.	Plaintiffs allege that the public school financing scheme for the State of New York denies children of the State the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States by continued reliance upon a system which requires expenditures for public school education a fraction of the local property wealth of a child's school district, rather than of the wealth of the State as a whole.	Plaintiffs ask the court to declare New York's system for financing public school education unconstitutional under the Equal Protection clause of the Fourteenth Amendment and to retain jurisdiction pending legislative enactment of all-allocation system of financing public schools of the Constitution of the United States.	Filed in 1972 in the United States District Court for the Southern District of New York.
OHIO Franklin County Education Association, et al. v. John J. Gilligan, Governor of the State of Ohio, et al.	The Ohio Education Association, an organization including 90,000 Ohio teachers and Public and	The Governor, Auditor, and Treasurer of the State of Ohio; the State of Ohio; the Public Institution for the State of Ohio; the State	The plaintiffs allege that the Ohio constitution requires that a system of common schools be established for Ohio children and that the equal protection clause of the United States Constitution requires the State to discharge its responsibility on a substantially equal basis. The State has established a system for education which unconstitutionally denies plaintiff school chil-	Plaintiffs ask the court to declare the State system for financing education to be a denial of plaintiffs' constitutional right to equal protection. Plaintiffs ask the court to retain jurisdiction, allowing them to defend their petition against the State of Ohio. Ohio reasonable time to restructure the	Suit was filed in early December 1971 in the United States District for the Southern District of Ohio, Eastern Division.

OREGON Olsen, et al. v. State of Oregon, et al.	Schoolchildren, their parents, and School District No. 40, Lane County, Oregon.	State of Oregon; Atto- rney General, Superintendent of Public Instruction for the State of Oregon.	Schools students and their taxpay- ing parents who are residents in the Reynolds- burg School Dis- trict in Franklin County, Ohio. Board of Education for the State of Ohio; the Treasurer and Auditor of Franklin County; and the Superin- tendent of the Reynoldsburg School District for Franklin County.	children equal educational opportunity in that it (a) makes the edu- cation of school age children in Ohio a function of the wealth of their parents and neighbors; (b) makes the education of school age children a function of the geographical location of the school district in which they reside; (c) provides students living in some school districts a material advantage over students in other school districts; (d) perpetuates marked differences in the extent of educational services, which exist among other public school districts; (e) uses school districts as the unit for alloca- tion of funds despite the fact that they bear no reasonable rela- tionship to the legislative purpose of providing equal educa- tional opportunities.	financing system so as to assure that ex- penditures for public education will no longer be a function of the wealth of school districts; and should defendants and the legislature fail to restructure the financing system within such a reason- able time, plaintiffs ask the court to reg- ulate the collection of property taxes and apportionment of school funds in satis- faction of the obligations undertaken by the State of Ohio and its constitution in conformity with the equal protection clause of the U.S. Constitution.	Filed in early 1972 in the Circuit Court of the State of Oregon for the County of Lane. The State's motion for a continuance pending the out- come in Rodriguez was denied on Aug. 14, 1972. The case has not yet been set for trial.
RHODE ISLAND Doorley, et al. v. Rhode Island, et al.	Mayor of Provi- dence, Rhode Island, school- children, and their taxpaying parents.	State of Rhode Island; Attorney General; Treasurer, Commis- sioner of the Board of Education, and Members of the Board of Regents of the State of Rhode Island.	Plaintiffs allege that the State financing system violates both the equal protection clause of the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Rhode Island insofar as it renders expenditure for plaintiffs' public education a function of the wealth of the city or town in which each plaintiff resides.	Plaintiffs allege that the State has established a financing system for its schools in which the expenditure for every child's educa- tion is a function of the taxable wealth per pupil of the school district in which the child resides creating widely varying amounts of taxable wealth per pupil of similar age and grade in violation of the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States and the Oregon State Constitution and provisions of the Oregon con- stitution relating to the establishment of a uniform and general system of common schools within the State.	Plaintiffs ask the court to declare that they have been denied the equal protection of the laws, to order the defendants to refrain from operating the present sys- tem of school finance except insofar as absolutely necessary to effect an orderly transition to a valid system for financing schools, and to afford the legislature a reasonable time in which to restructure the financing scheme in compliance with the equal protection guarantees of the Oregon and United States Constitu- tions.	Filed in the United States District Court for the Dis- trict of Rhode Island on Apr. 6, 1972, the case is still pending.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
SOUTH DAKOTA Farmers Educational Cooperative Union of America, et al. v. Kundert, et al.	Schoolchildren, taxpayers, and an organization of South Dakotan farmers and taxpayers.	Auditor, Treasurer, State Superintendent of the Department of Public Instruction, Commissioners of School and Public Lands, and Commissioner of the State of South Dakota; county tax assessors, auditors, and treasurers; and school districts.	Plaintiffs contend that they have been denied the equal protection of the laws of the United States and of South Dakota by the financing scheme adopted by the State of South Dakota by denying to plaintiff children cultural and educational opportunities substantially equal to those enjoyed by children attending other public schools in other districts. Plaintiffs claim that the financing scheme is unconstitutional because it denies the equal protection clause of the Constitution of the United States and the State of South Dakota and the right to a general and uniform system of public schools as provided for in the State constitution.	Plaintiffs ask the court to declare that the financing scheme violates the plaintiffs' rights to equal protection of the laws under the constitutions of the United States and South Dakota and that the State has violated an general and uniform system of education throughout the State as required by the State constitution.	Filed in the United States District Court for the District of South Dakota, Southern Division, early 1972.
TEXAS, Austin Janell Guerra, et al. v. Preston H. Smith, Governor of the State of Texas, et al.	Mexican-American children who go to public schools in two Texas school districts, and their parents, who are property taxpayers.	The Governor of Texas; the State Commissioner of Education; and the Texas State Board of Education.	Plaintiffs allege that the Texas and United States Constitutions require the State to maintain a school system on a substantially equal basis for all children in the State. Plaintiffs allege that the State has delegated this responsibility to local school districts and that it has allowed each school district to raise and retain money locally, despite the fact that there are substantial disparities among the districts with respect to their tax bases per pupil. As a direct result of this financing scheme, plaintiffs allege that substantial disparities exist in the amounts of dollars spent per pupil in the various school districts. Plaintiffs claim that the State's financing scheme denies their constitutional right to equal educational opportunity in that it: (a) makes the quality of education a function of the wealth of the children's parents and neighbors, as measured by the tax base of their school district; (b) makes the quality of education a function of the geographical accident of the school district in which plaintiffs reside; (c) fails to take into account the variety of educational needs of the several school districts and of the children therein; (d) provides students living in some school districts material advantages over students in other school districts; (e) fails to provide children with equal educational opportunities; and (f) perpetuates marked differences in the quality of educational services among the school districts in the State. (g) provides relatively inferior educational opportunity to a disproportionate number of Mexican-American and Negro school children. Plaintiff-taxpayers claim that as a direct result of the State school finance system they are required to pay higher tax rates than taxpayers in other school districts in order to achieve the same or lesser educational opportunities for their children.	Plaintiffs ask the court to declare that they have been denied equal protection of the laws and that the Texas school finance system is void under the United States and Texas Constitutions.	Suit was filed Jan. 28, 1969 in the United States District Court for the Western District of Texas, Austin Division. Defendants moved to dismiss in late 1969, and on July 20, 1971, the court ordered the dismissal of the case for failure to state a claim on which relief could be granted. The case is now in the U.S. Court of Appeals, Fifth Circuit. Briefs have been submitted and oral argument is scheduled for February 1972.

TEXAS, Fort Worth, Dallas and Independent School District No. 10, Plaintiff; Dr. J. W. Edgar, Commissioner of Education of the State of Texas, Defendant.	The school districts of Fort Worth, Dallas, and Houston, and the parents of these three districts.	The State Board of Education and its Commissioner.	Plaintiffs allege that the operation of the State's foundation plan is illegally and unconstitutionally exacting the amount of the local contribution from plaintiff school districts. The State's minimum foundation statute requires that the local contribution be calculated according to its taxpaying ability, and plaintiffs claim that the State's minimum foundation statute is unconstitutional in that manner, but that the State's minimum foundation statute is not unconstitutional in that manner that it is not uniform and which discriminates against the State's minimum foundation statute. Plaintiffs seek equal protection and to due process under the United States Constitution of Texas.	Plaintiffs ask the court to declare the manner by which local taxpaying ability is determined to be unconstitutional and to order the defendants to calculate uniformly local contributions to minimum foundation grants on the basis of each local district's taxpaying ability.	Filed in the United States District Court, Northern District of Texas, Fort Worth Division, now pending before a three-judge court.
TEXAS, San Antonio, Demetrio F. Rodriguez, et al. v. San Antonio Independent School District, et al.	Public school children and their taxpaying parents in the Edgewood School District, an area which is located within the city limits of San Antonio, Bexar County, Texas. All of the plaintiffs are Americans of Mexican descent.	The Texas State Board of Education and its Commissioner; the Attorney General of the State of Texas; the Bexar County School Trustees; and the eight school districts located in the City of San Antonio, Texas.	Plaintiffs allege that the Texas Constitution requires the State to support a free public school system. Plaintiffs allege that the system established by the State to support free public education denies them equal educational opportunity in that (a) it makes the quality of education received by the plaintiffs a function of the wealth of their parents and neighbors as measured by the property values of the school district in which they reside; (b) it provides students living in school districts other than Edgewood, with fewer advantages for education; (c) it provides plaintiffs, who are of substantially lower social class, aptitude, motivation and ability with substantially fewer educational resources; (d) children in defendant school districts other than Edgewood, are denied equal educational opportunities; (e) it discriminates against Mexican-American school children.	Plaintiffs ask the court (a) to declare that the State's system for financing schools has denied them equal protection of the laws of the United States and Texas Constitution and is therefore void; (b) to preliminarily and permanently enjoin the enforcement of these Texas statutes which establish the State's system for financing schools; (c) to retain jurisdiction of this action, affording defendants an opportunity to restructure the school finance system to provide substantially equal educational opportunities to all children; and (d) to provide substantially equal educational opportunities to all children by the equal protection clause of the Fourteenth Amendment to the United States Constitution; (e) to declare the Texas Constitution; (f) alternatively, to order that the defendant school districts in Bexar County be abolished and that the County School Trustees establish new boundary lines for school districts or districts of approximately equal taxable property per child.	Suit was filed in the United States District Court, San Antonio Division, on October 15, 1963, it overruled the defendants' motion to dismiss. Action on the case was delayed in 1969 and 1970, on June 23, 1971, the court declared the Texas system unconstitutional and ordered it corrected by 1973. On June 7, 1972, the Supreme Court noted probable jurisdiction. Briefs were submitted this summer and oral argument was heard in the October 1972 term. Citation: 337 F. Supp. 280.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
VIRGINIA Bath County Bates, et al. v. Wilkinson, et al.	Students in public schools of Bath County; taxpayers in Bath County.	Public school and finance officials of the State of Virginia; the House of Delegates of Virginia.	Plaintiffs claim that they are denied equal protection of the law by State laws creating substantial disparities in quality of, and facilities for, education provided in Bath County as compared to other areas of the State. Students and taxpayers of Bath County, who receive less than \$3,000 a year, request that the State take action to end to educational discrimination and to equalize educational opportunities. They allege that the education system in Bath County is inadequate to provide minimal educational opportunity even while their tax rates are set at the legal ceiling. In addition, they allege discrimination in that the State's educational aid supplements are related to the locality's educational spending from local tax sources, a factor actually increasing total education resource disparities between school districts. Plaintiffs further allege that the system fails to take into account the added costs necessary to provide substantially equal educational opportunities—buildings, equipment, teachers, books, materials—in their rural areas. They state that the Virginia Legislature has not made previous attempts to deal with expenditure disparities within the State.	Plaintiffs ask the court to declare the State financing system and its equal protection clause of the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Washington and to direct the defendants to reallocate the funds available for the financial support of the school system consistent with equal protection guarantees or—in the alternative—to retain jurisdiction affirming defendants and the legislature a reasonable time to restrict the school financing system consistent with the United States and Washington Constitutions.	A three-judge Federal court in the Western District of Virginia dismissed the case, citing the <i>McInnis v. McGraw</i> decision. The U.S. Supreme Court unanimously affirmed the district court opinion. Citation: 310 F. Supp. 572, 397 U.S.C. 44.
WASHINGTON Northshore School District, et al. v. Kinneer, et al.	Schoolchildren, their parents, and school districts.	Director—Department of Revenue, the Department of Revenue, State Superintendent of Public Instruction, Treasurer, and members of the Board of Education of the State of Washington, and the State of Washington.	Plaintiffs allege that as a direct result of the State school financing scheme, which makes the quality of every child's public education a function of the taxable wealth, per pupil, of the school district in which he resides, substantial disparities among the State school districts exist in the dollar amount spent per pupil and therefore in the quality and extent of available educational opportunities as well as in the rate of taxes which must be paid for the same or lesser educational opportunities in violation of the State's duty to provide for the ample provision of education and of the State of Washington's and the United States' constitutional provisions guaranteeing equal educational opportunity.	Plaintiffs ask the court to declare the financing system and its equal protection clause of the Fourteenth Amendment of the United States Constitution and the Constitution of the State of Washington and to direct the defendants to reallocate the funds available for the financial support of the school system consistent with equal protection guarantees or—in the alternative—to retain jurisdiction affirming defendants and the legislature a reasonable time to restrict the school financing system consistent with the United States and Washington Constitutions.	Filed in April 1972 in the State Superior Court which is granted original jurisdiction in the matter because of a State procedural rule allowing for appellate jurisdiction in actions against State officers. Northshore School District has been struck as one of the parties plaintiffs.

WISCONSIN Bedard, et al. v. Warren, et al.	Schoolchildren and their tax- paying parents.	Attorney General, Treasurer, and Superintendent of Public Instruction of the State of Wisconsin; Super- intendent of Schools and President of the Board of Education, Wauwatosa, Wisconsin.	Plaintiffs allege that the Wisconsin system of school finance violates the equal protection clause of the Fourteenth Amendment of the Constitution of the United States by making the expenditure for every child's public education a function of the taxable wealth per pupil of the school district in which he resides and producing widely varying amounts of taxable wealth per pupil.	Plaintiffs ask the court to declare that they have been denied the equal protection of the laws of the United States by the present method of funding public primary and secondary education in Wisconsin, that such funding is unconstitutional under the Fourteenth Amendment, and that the defendants and the plaintiff must restructure the finance system within a reasonable period of time consistent with the equal protection clause.	Filed in late 1971, in the United States District Court for the Western District of Wisconsin. A motion to stay further proceedings is currently under advisement.
WISCONSIN Net Worth Tax League v. State of Wisconsin, et al.	Taxpayers organization.	State of Wisconsin; Superintendent of Public Schools, Auditor, and Treasurer of the State of Wisconsin.	Plaintiff alleges that the Wisconsin system of school finance with its reliance on the property tax as its revenue source is unconstitutional under the Fourteenth Amendment of the United States Constitution because it invidiously discriminates (a) between schoolchildren in the amount of money spent on their education depending on the property values of their neighborhood, (b) against persons on social security whose income therefrom has not increased proportionately with the rise in their property taxes, and (c) against property owners and renters who do not have children in the public school but who must still pay taxes for public education.	Plaintiffs ask the court to declare the Wisconsin system of financing schools and education from property tax revenues unconstitutional under the Fourteenth Amendment to the United States Constitution and to order that the defendants refrain from operating under such a system.	Filed in the United States District Court for the District of Wisconsin, Eastern Division, Milwaukee, Wisconsin, on Mar. 7, 1972.
WISCONSIN Milwaukee Justus A. Stovall, et al. v. City of Milwaukee, et al.	Public School chil- dren and their taxpaying parents from the City of Milwaukee.	The City of Milwaukee and its Mayor, School Board and Superintendent of Schools; the County of Milwaukee; the State of Wisconsin, and its Governor, Attorney General, and Superintendent of Public Instruction.	Plaintiffs allege that the Wisconsin statute authorizing the financing of public schools for the State of Wisconsin creates a system which relies in large part on local property tax and that the financing scheme causes significant disparities among individual school districts in the amount of state funds available per pupil for each district's educational programs. Plaintiffs claim that this financing system fails to meet the requirement of the equal protection clause of the Fourteenth Amendment in that (a) it makes the quality of education for school age children a function of the wealth of their parents and other taxpayers in their school district; (b) it makes the quality of education a function of the geographic accident of the school district in which children reside; (c) it fails to take account of the variety of educational needs of school districts; (d) it provides students living in some school districts with material advantages over students in other school districts; (e) it fails to provide children of substantially equal age, aptitude, motivation, and ability with equal educational opportunities; (f) it perpetuates marked differences in the quality of educational services available to school districts; (g) it uses a unit (school district) for allocation of educational funds which bears no reasonable relationship to the state legislative purposes for providing equal educational opportunity; (h) it creates a system in which numerous children reside in school districts which provide relatively inferior educational opportunity; (i) it creates a situation in which plaintiffs-taxpayers are required to pay a higher tax rate than taxpayers in other school districts in order to obtain the same or lesser educational opportunity for their children.	Plaintiffs ask the court to declare that the Wisconsin system for financing public schools in Wisconsin is unconstitutional and void under the equal protection clause of the United States Constitution. Plaintiffs ask the court to enjoin the defendants from enforcing the present system for raising and distributing funds for education.	Filed in the Wisconsin Circuit Court for Milwaukee in late November 1971, the case is still pending but may not be heard until after the United States Supreme Court has ruled in Rodriguez.

LAW SUITS CHALLENGING STATE SCHOOL FINANCE SYSTEMS—Continued

Case	Plaintiffs	Defendants	Claim	Remedy	Status
WISCONSIN, <i>et al.</i> v. <i>Bellevue, et al.</i> v. <i>the State of Wisconsin, et al.</i>	Students in public schools and their parents.	State of Wisconsin, its Treasurer, and the Superintendent of Public Instruction.	Plaintiffs allege that as a result of the delegation of the power to tax to various State subdivisions created without uniformity of tax base, and the manner of appropriation to the various divisions of sums of money in the State school fund, substantial disparities exist in the quality and extent of public education available in the several school districts of the State. They also allege that State aid fails to compensate to any extent for substantial differences in needs of the school districts, for the varying conditions of school facilities, or for the varying costs of those districts, particularly the extreme expense of providing educational opportunities to those children who live in the extremely disadvantaged urban areas.	Plaintiffs ask that the legislature be given reasonable time to reapportion school districts and that the court make appropriate apportionment of State funds if the legislature fails to act.	Filed in 1969 in Wisconsin State Court (Dane County Circuit Court). Prosecution of the suit has been delayed indefinitely due to lack of funds.
WYOMING, <i>et al.</i> v. <i>Hickie, et al.</i> v. <i>Sweetwater County Planning Commission for School Districts, et al.</i>	Citizens and taxpayers of redistricted school district.	State and county committees charged with the function of redistricting school districts.	Plaintiffs contend that as citizens and taxpayers they have suffered injury by having their school district redistricted by the county commission in an effort to equalize State educational opportunities in a manner neither part of any efficient administrative unit nor promulgated with primary consideration to the education, convenience, or welfare of their children.	Plaintiffs ask the court to invalidate the plan adopted for redistricting school districts.	The lower State court remanded the issue to the State committee with instructions to reject the proposed redistricting plan. On appeal, the Supreme Court of the State of Wyoming affirmed the lower court's opinion held that the gerrymandering of districts to provide equalized revenue sources was unsatisfactory as a solution to the problem of fiscal disparities between school districts based upon the constitutionality of the provisions of the State Constitution and directed the State Legislature to restructure the State educational finance system. Citation: 491 P. 2d 1238.

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A LEGISLATOR'S GUIDE TO SCHOOL FINANCE

Prepared for

THE NATIONAL LEGISLATIVE CONFERENCE
SPECIAL COMMITTEE ON SCHOOL FINANCE

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The National Legislative Conference wishes to express its gratitude to the Special Committee on School Finance for the fine contributions it has made to the field of educational finance reform. Furthermore, we are especially grateful for the excellent leadership provided by the Special Committee's Chairman, Senator Thomas Laverne of New York. Senator Laverne's commitment to education is exemplified by his experience as a former teacher, as Chairman of the Senate Education Committee and as a member of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education.

The Special Committee on School Finance was established last February in response to numerous State and Federal Court challenges to the manner by which educational revenues are raised and distributed. Since its creation, the Special Committee has met on four occasions; the fruits of its efforts are well displayed by its excellent recommendations which appear in this Handbook.

John H. Conolly

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**REPORT OF THE NATIONAL LEGISLATIVE
CONFERENCE SPECIAL COMMITTEE ON
SCHOOL FINANCE**

Foreword by Senator THOMAS LAVERNE *New York,*
Chairman of the Special Committee

An urgent challenge faces state legislators throughout the nation: the need to reform the way we finance our schools. School finance, once the province of finance technicians and "school men," has now become a critical matter of general public concern.

Sharply mounting costs in education have revealed both the inadequacy and inequity of the present school finance system, with its heavy reliance on the local real property tax. The inadequacy appears both in the financial troubles of the schools and in the incentive provided by the real property tax to play the game of "fiscal zoning." The inequities, which have existed for years, have been highlighted by a series of major court cases—beginning with the *Serrano* case in California.

It is time for a new policy in school finance. Data collected by study commissions at both the national and state levels have pointed up the problems of the present system. The law developing in the courts, requiring changes in state school finance systems, is increasing the urgency of the need to change the old policy. The growing pressure for reform will overcome the obstacles which have prevented reform in the past.

Because of the critical importance of the school finance issue, Representative Bill Clayton of Texas, Chairman of the National Legislative Conference's Intergovernmental Relations Committee, appointed a 15-member Special Committee on School Finance, with its membership drawn from throughout the country. This committee was charged to examine the requirements developing in court decisions, to explore the options available to state legislators and to recommend policy positions at the annual meeting of the National Legislative Conference.

The committee saw its function not as another research group but rather as an action-oriented group. It set out to take advantage of the research of others in carrying out its responsibility of identifying what steps state legislators must take in meeting their challenge. With excellent support from the NLC staff, the committee discussed reports on major research efforts and on proposed solutions and agreed on a set of basic principles.

In its study, the committee reached agreement on a number of basic issues. Chief among these were:

- That states could assume responsibility for seeing that elementary and secondary schools are funded properly, and that the "equal opportunity" responsibility enunciated in *Serrano* be accepted, regardless of the eventual outcome in the courts, because the *Serrano* principle is right;
- That states put their taxing systems in order, by reforming the administration of their real property tax systems;
- That states review the governance of education, the relationships between state education departments and local districts to create effective systems for both accountability and measurement of educational need and effective methods for administering funds, both state and federal.
- That the federal government adopt a program of school support which will enable the states to do what they must and which will create a reliable, permanent and predictable federal role in a federal-state partnership.

The Committee Report

The National Legislative Conference's special committee on school finance affirms the principle that all states have an obligation to provide an equal educational opportunity and quality education to all children attending public school within their jurisdiction. We are in agreement with the principle established in *Serrano v. Priest* that the quality of a student's public elementary and secondary education should not be dependent on the affluence of his parents or school district. Regardless of future court actions, we believe that

the principle established by *Serrano*, so far as public education is concerned, is essentially reasonable and equitable and ought to serve as a policy objective for every state.

We recognize that varying constitutional dictates and differing tax preferences within the separate states make it impossible to suggest any uniform school finance system that would meet the needs of all states. Each state will have to develop one which best responds to its individual circumstances. Whatever general guidelines are agreed upon by the states, however, must be fair and equitable to both the taxpayer and the public school student, and must, by definition include:

- (1) Equalization of property taxes, and
- (2) Control of local expenditures.

In order to accomplish these objectives, the National Legislative Conference makes the following recommendations:

I. Money alone will not cure all the ills of our public education system, but no improvements can be made until the manner in which educational funds are raised and distributed is altered.

The states, in line with their clear constitutional jurisdiction over education, should assume full responsibility for raising and distributing the revenue for public elementary and secondary education.

II. Evidence clearly shows that the manner by which local property taxes are levied for financing public education favors wealthy localities with a large non-residential tax base and penalizes those jurisdictions with a small non-residential base.

The states, in fulfilling their responsibility in the area of educational finance, should move toward stabilization of and, where possible, a reduction in their reliance on the local property tax as a revenue source for public education.

States which continue to use the property tax as a source of educational revenue should initiate a review and, where necessary, a reformation of their property tax administration. Specifically, the states are urged to adopt a uniform

system of assessment to assure an equalized property tax burden.

Furthermore, the method of taxation used to supplement or supplant the property tax base should have a growth factor comparable to the increase of educational costs.

III. Local, non-educational public services are financed largely from the property tax, and although the central cities tend to have a relatively large property tax base, the total burden placed upon their tax base usually is heavier than it is in areas where the demand for such public services as sewage maintenance, street lighting, fire and police protection is low.

In the attempt to equalize the costs of maintaining schools, states are urged to recognize those non-educational expenses, for example, municipal overburden, which affect local tax burdens.

IV. An equal educational opportunity implies an equalization of educational resources among school districts. In order to equalize resources among districts, two alternatives are available: (1) reduce education funds from some districts to raise the resource level for others, or (2) provide substantially increased funds to raise the poorer districts' resources up to a level enjoyed by the more affluent districts. The latter is obviously preferable.

No school district should be compelled to reduce its level of expenditure while a state moves toward assuming its full role in financing and distributing educational funds.

The equalization level is a matter to be determined by each state. However, it is recommended that the 65th percentile level of per-pupil expenditures be the minimum standard guaranteed by each state.

V. Equality does not mean identical treatment. The crucial value to be fostered by a system of public education is the opportunity to succeed, not the uniformity of success. While all are equal under the law, nature and other circumstances yield advantages to some, while handicapping others. Hence, as the President's Commission suggested: "To offer children

only equal education, disregarding differences in their circumstances is merely to maintain or perhaps even to magnify the relative effects of advantage and handicap. Equal treatment of unequals does not produce equality."

A concept of equal educational opportunity should reflect a sensitivity to the differences in costs and variations in interests and needs of those to be educated. Attempts at relieving disparities by attending to particular educational needs and variations in costs will prove fruitless, however, unless those needs and costs can be clearly identified and fully quantified.

We support the recommendation of the President's Commission on School Finance which calls upon the states to develop both a Cost-of-Education Index and an Educational Need Index.

VI. Although it has been accepted that the responsibility for education is reserved for the states, no level of government—federal, state or local—can escape involvement in the educational process. The acceleration of changes in American society, the vast mobility of its people, and the extent to which gross disparities in education can reflect adversely on the quality of an individual's life have combined to make education a matter of concern beyond the boundaries of the states. For the states to play a full role in the funding and distribution responsibilities for elementary and secondary education, substantial tax increases will be necessary. Many surveys have concluded that the average state would be required to increase its revenue collections by more than thirty percent if it wished to assume ninety percent of the costs of public elementary and secondary education. And yet, the federal tax structure severely impedes the capacity of the states to develop revenues at a rate sufficient to meet increasing educational costs.

The National Legislative Conference recommends that the federal government substantially increase its level of financial assistance (presently at seven percent) for public elementary and secondary education. Increased federal funding should serve the purpose of assisting the states in greater equalization of resources. Federal assistance should

take the form of grants for the general purpose of equalization but should remain otherwise unrestricted.

With respect to P.L. 874 funds, if they are not considered in a school district's ability to pay, any attempt by the state to provide equalization may be distorted. Accordingly, we urge Congress to give consideration to allowing those funds to count as local school district contributions.

VII. Federal assistance is necessary to maintain certain operating programs in elementary and secondary education. However, even with federal assistance, many worthwhile educational programs are delayed or even eliminated because of the uncertainty surrounding the amount and timing of federal appropriations. Adequate foreknowledge of the amount of federal assistance is imperative if states are to structure properly their own appropriations and tax policy. Many educators feel they would rather not have the funds than not be able to depend on their timely authorization.

In full endorsement of the recommendation of the President's Commission on School Finance, we urge the enactment of federal legislation that would guarantee to state and local school systems, in the event of delays in federal outlays, 80 percent of the funds provided in the previous year.

We strongly urge the Congress to restructure its appropriation process so that school districts know well in advance of a school year the exact amount of their federal aid.

Most educators would prefer that federal funds be available in general block allocations rather than in specific categorical grants. The Committee supports this preference but stresses that as a prerequisite to the creation of such a program, the states must instill confidence in the federal government in their ability to handle effectively such allocations and insure, through a monitoring system built into the plan, that such funds are actually being spent as state policy directs.

VIII. If the states are to assume a more active role in public education, especially in the realm of funding, and if they are

to expect increased federal assistance, they have a responsibility to improve their governance of education.

States should take immediate action toward strengthening their educational administrations in order to insure the efficient flow of both federal and state revenue and to guarantee that funds, be they federal or state, are applied for the purposes intended.

IX. The argument is made that a greater assumption of school financing responsibilities by the state will undermine, or perhaps even destroy, the tradition of local control of education. We believe that local control is not dependent on local tax raising ability. Local school districts are the creation of and responsibility of the state. Their authority to raise funds for education comes as a result of delegation by the state of its own taxing authority.

There is a distinction between local fiscal control and local control over policy. Local fiscal control is no longer a possibility if financial discrimination is to be terminated in public education. Insistence upon financial control over education by the state in order to eliminate discrimination to taxpayers and students in no way has to interfere with continued administrative and policy control of the schools by the local districts. On the contrary, the new standard of school finance encouraged by *Serrano* suggests that for the first time poor school districts will enjoy significant local control over educational policy, which the lack of resources has previously made impossible.

Evidence fails to demonstrate any correlation between an increase in the state assumption of educational costs and loss of local decision-making authority. If anything, the evidence suggests that local decision-making power to shape the content of local educational programs is enhanced once local boards are freed of the burden of searching for essential financial resources.

Regardless of how the states decide to finance their system of public education, they can and should leave policy decisions and administrative control in the hands of local districts. It is the state's obligation to insure that a basic educational package is delivered to all children on an equalized basis; it should be the local district's prerogative to determine how that package will be delivered.

X. At least 75 percent of current operating expenditures in education go into teachers' salaries and salaries of other employees. Because of the fiscal magnitude of this portion of educational costs, increased state responsibility in this area will be necessary.

The National Legislative Conference recommends that as an essential corollary to state assumption of the fiscal responsibility for public education, the state should play a larger role in the determination of teacher salary schedules.

XI. Some of the fiscal reforms in public education will be nullified if the increased funds flowing to school districts are not used efficiently.

Each state should review the governance of education, the relationship of state departments and local districts, the present and potential effectiveness and accountability of the department of education as a conduit of funds. The creation of a state organization capable of administering federal funds and of supporting local districts may be required.

XII. The issue of school finance reform is only in the initial stages of debate. It is certain that reform will not come overnight—and may not come at all without the ongoing efforts of concerned organizations and interest groups to educate the public and elected officials about the crisis before us.

We wish to express our agreement with the general policy statement on Educational Finance Reform adopted by the National Governors' Conference. In particular, we endorse its two major recommendations calling for immediate action from the states toward equalizing educational opportunities and urging assumption by the federal government of far greater responsibility for the financing of education.

XIII. The next session of Congress promises to be a critical one for the future of public education in the United States. All of the major funding bills for elementary and secondary education will be up for review. The National Legislative Conference looks forward to working together with other con-

cerned organizations, such as the Governors' Conference and the Education Commission of the States to press Congress for the financial assistance which will help states meet their responsibilities in public education.

The Special Committee on School Finance recognized that its task is not completed by submission of this report. The Committee should continue to function in order to encourage the implementation of those recommendations agreed upon by the NLC and to attend to the ongoing developments in the field of school finance reform. It should also expand its lobbying efforts with Congress and state legislative leaders and increase its public relations efforts toward that end.

The National Legislative Conference has offered the preceding recommendations on school finance, aware that reform of the manner in which educational revenues are levied and spent is a necessary precondition for the realization of the societal goals we have established. While there is much to commend about our education system, much work still remains to be done before the promise of quality education is fulfilled. A tremendous challenge is presently before us, for there is no more important business in an open, democratic society than the education of our young.

* * *

This handbook is offered to provide guidance to state legislators in developing a reasonable response to this challenge. It presents in concise form the basic information needed to cope with the school finance problem. It analyzes the elements of the problem and describes four alternative approaches. The handbook was produced for the Special Committee on School Finance by volunteers with the assistance of the Education Commission of the States and the National Program for Educational Leadership.

Besides being a valuable tool for the policymaker, this handbook is a concrete example of an emerging coalition of those who are concerned about schools, school finance and what schools do for children. We are grateful to these cooperating organizations for their part in the production of a timely and useful document. We look forward to their con-

tinuing cooperation in the future work of the Special Committee.

We also hope to broaden this coalition to include other organizations interest in school finance reform, such as the Council of State Governments, the National Governors' Conference, the National Education Association and the National School Boards Association. A vigorous and coordinated effort is needed to accomplish what needs to be done in making state legislators aware of their combined challenge and opportunity, in urging Congress to take the steps it must take to make reform at the state level financially feasible, and in explaining to the public their stake in the adoption of a more reasonable and more equitable school finance system.

SUMMARY

PREPARATION OF THE BOOKLET: BACKGROUND AND PURPOSE

This booklet contains a brief analysis of four "real life" alternatives for state systems of funding schools, along with a concise conceptual framework for approaching the study of school finance reform.¹ Since the booklet was prepared as a practical guide for state legislators, it avoids highly theoretical discussions of school financing systems. Rather, it focuses on concrete issues of reform in the context of the political atmosphere of each state. The goal is to enable interested legislators to understand better the school finance controversy now ranging across the nation and provide them with the tools to make better choices in responding to that controversy.

The School Finance Controversy in a Nutshell

The booklet's first major section is an introduction entitled "Issues and Possibilities In School Finance." In a short background discussion of the problems leading up to this nation's current school finance controversy, it describes the controversy as having two basic ingredients: inadequate funding (the "*adequacy* problem") and inequitable collection and distribution of education funds (the "*equity* problem"). The legislators' dilemma is posed in the following way: how to provide new money for *equitable* school finance when there is too little money to fund *adequate* public elementary and secondary education.

The *adequacy* problem is discussed in the context of "the taxpayers rebellion." The *equity* problem is identified as

¹ A printed appendix is available for anyone who would like to study more closely the specific financial situation of the states covered in this report and to examine the legislative provisions of those specific proposals. The appendix contains a complete financial analysis of the school financing systems, both past and proposed, in the four states and, where available, copies of the legislation which embodies the new proposals. State legislators can obtain the appendix, at no cost, by writing Mr. Richard Merritt, National Legislative Conference, 1150 Seventeenth Street, N.W., Washington, D.C. 20036.

having been raised by the widely publicized court decisions beginning with the California Supreme Court's suggestion that that state's school finance system might be unconstitutional because of its reliance on local wealth for funding public education.

Next the introduction briefly analyzes recent and current school finance litigation. In these lawsuits, two common complaints emerge: First, state laws allow taxpayers in wealthy districts to tax at low rates and fund education at relatively high levels, while the taxpayers in poor districts pay more to get less; second, state laws make greater school resources available for children in some communities than for comparable children in other communities.

The introduction then clarifies three points about these court decisions which have declared unconstitutional five state systems of school finance. First, the courts do not say that the property tax, *per se*, is an unconstitutional tax. What they say is that, due to large variations in district wealth under the present systems, huge disparities in per-pupil expenditures result. In other words, states have established and maintained systems for funding schools that unconstitutionally discriminate against children residing in poor school districts. Second, the court decisions do not require, nor do they suggest, that states must enact plans to provide equal dollars per pupil. In short, the "one dollar-one scholar" analogy to the reapportionment cases has not been drawn by the courts, nor is it being pressed before them. Third, no court has designated what should be done to correct the unconstitutional systems of funding schools. This task has been left to the state legislators.

Since equal educational opportunity, as defined by the courts, does not seem to call for equal dollars per student, the introduction goes on to suggest certain factors that arguably justify unequal expenditures:

- higher funding levels for students with special handicaps and needs;
- higher funding for socially and economically disadvantaged children and/or for those with health problems;
- and

—higher funding for high cost districts, such as sparsely populated rural areas that lack economies of scale or densely populated urban areas where land, teachers' salaries, and others costs are high.

What is needed, the introduction concludes, is a "cost of education index" and an "educational needs index." Several techniques are suggested for handling educational needs and cost differentials:

- 1) Pupils could be counted and aid allocated on a weighted basis, with the weighting based on carefully evaluated exemplary programs;
- 2) A given district's aid could be keyed to socio-economic characteristics such as family income, student achievement levels, etc.;
- 3) Aid could be tied to tax capacity or actual educational cost for services similar to those provided in other school districts.

Next the introduction describes in some detail two school finance alternatives which are increasingly being discussed by state legislators. They are "full state funding" and "district power equalizing."

The last section of the introduction discusses briefly how to raise additional tax revenues. No "best" tax is identified, because the history of state taxation and the distribution of wealth among taxable resources vary so widely among the states that a conclusive discussion of state tax alternatives would be wholly inappropriate.

A DESCRIPTION OF FOUR STATE ALTERNATIVES

The four states are discussed in the following order: Minnesota, Michigan, Kansas and New York. This ordering was chosen to reflect the varying stages of acceptance for the specific proposals (see chart below).

Status of the Four State Proposals

	Minnesota	Michigan	Kansas	New York
Proposed Formally By A State-Appointed, Non-Legislative Study Commission	No	Yes	No	Yes
Proposal Formally Introduced as a Bill in the State Legislature	Yes	Yes	Yes	No
Status of Legislation: Passed (P) Defeated (D) Still Pending (S)	P	D, S*	D	—

* Defeated, but modified and re-introduced.

The length of the reports for the four states is directly related to the amounts of legislative consideration devoted to them. For example, the Minnesota report, which discusses a proposed school funding system that has passed the Minnesota legislature, is the longest; whereas the New York report, which discusses an alternative that is yet to be introduced as legislation, is much shorter.

An attempt was made to present the reports in a uniform fashion so as to facilitate comparison. Generally, the following outline was used:

- a description of the previous (or current) school finance formula and the tax structure supporting it;
- a description of the forces for and against change of that formula;

- a description of the proposed changes to the formula;
- a description of the political process surrounding the legislative deliberation over the proposed alternative; and
- a brief statistical appendix for a select number of exemplary districts.

Minnesota

The Minnesota report traces the political evolution of a plan that is largely a revised version of a program now operating in many states—the “minimum foundation program.” The significance of the Minnesota proposal, however, transcends its similarities to other programs in other states. It is remarkably innovative in its provisions for special weighting for disadvantaged children, counting pupils according to their enrollment rather than their attendance (thereby eliminating discrimination against school districts which have high instances of absentees), and the establishment of what amounts to a statewide property tax.

Perhaps the most notable fact about the Minnesota legislation is that it passed the legislature and is now law. Therefore, the Minnesota report may be an especially instructive guide to legislative passage of school finance reforms. Certainly, a major component of this success story was the active support and involvement of both the Governor and the finance committee chairman of the legislature.

Michigan

In Michigan, like Minnesota, reform efforts have been championed by the governor, and the proposed changes would again be very dramatic. Governor Milliken's plan would shift school support from its major dependence on local property taxes to much greater reliance on a state income tax. A foundation program, based on a uniform personnel:pupil ratio throughout the state, would be instituted as an approach to “equal opportunity,” and local districts would be allowed small local millages for enrichment and categorical programs. Virtually every district could have its per-pupil expenditures increased.

The legislative history of Michigan's efforts so far is a lesson in the political pitfalls that can swallow up even widely acceptable proposals.

Kansas

In Kansas an attitude of austerity prevails. Tax questions seem to be a dominant concern in school finance considerations.

A legislative committee has rejected a school finance bill which would have implemented district power equalizing. The bill, written after proposals offered by educators and farmers were modified by pressure from labor unions, utility and railroad interests and others, was a real compromise measure.

Under SB-716, local effort (rather than local wealth) would have determined education expenditures for each district. The state would have assumed responsibility for all transportation costs. Although hardly radical, the bill was considered too expensive.

In spite of the fact that the bill received little support, it will probably form the nucleus of a new committee effort. The major obstacles to be overcome seem to be a fear of more taxes and an inability to unite behind a proposal.

New York

School finance in New York has been extensively studied, and the initiative for action has now switched to the legislature. Of the states in this report, New York could be characterized as the slowest, most thorough and deliberative in the process of reform. Whether or not this extensive study will pay off is yet to be seen.

The New York report describes the Fleischmann Commission, which was created by the legislature and mandated to study all aspects of New York education and to propose reform. The report deals almost exclusively with the Commission—the reasons for its birth, the conclusions it reached, and the reaction to it.

The Commission, concerned primarily with the problem of equalization, recommends full state funding. A state-wide

property tax is proposed, with the rate of taxation to be uniform and frozen at or slightly below its original rate. Revenue would be distributed by the state to bring all schools up to the level of the district spending at the 65th percentile. Expenditures of those above the 65th percentile would be frozen until the rest of the state catches up. Educationally disadvantaged children would be weighted at 1.5.

Legislation is now being written to implement the Commission's recommendations. The New York experience cannot be fully evaluated until the legislature responds to those proposals.

A COMPARISON OF PROPOSALS FROM FOUR STATES

Specific Features of State Proposals		Minnesota	Michigan	Kansas	New York
TAXES	Equalizes Property Tax Rates State-wide	Yes	No	No	Yes
	Provides General Property Tax Relief (i.e. reduces total amount of revenues derived state-wide from the property tax)	Yes	Yes	No	No
	Provides Special Property Tax Relief (i.e. reduces taxes for specially identified classes of taxpayers, such as elderly, renters, farmers, businesses, etc.)	Yes	No	No	Yes
LOCAL DISTRICT CONSIDERATIONS	Eliminates District Taxes, i.e. Full State Funding	No	No	No	Yes
	Limits District Contributions	Yes	Yes	No	Yes
	Allows Districts "local leeway" or "local add-ons"	Limited (l) Unlimited (u) Equalized (e) Nonequalized (n)	l	u	No local add-ons permitted
GENERAL EDUCATIONAL EXPENDITURES	Raises Total State-wide Expenditures for Education (thus requiring a (net) increase in total taxes)	Yes	Yes	Yes	Yes

* Add-on millage for enrichment would be equalized; add-ons for categorical programs would not be equalized.

Specific Features of State Proposals		Minnesota	Michigan	Kansas	New York
GENERAL EDUCATIONAL EXPENDITURES	% of students who will receive more \$ under the proposed system	99%	99%		67%
	% of districts that will receive more \$ under the proposed system	96.4%	95.2%	depends on	65%
	levelling up percentages			tax rate chosen by local districts	
	% of students who will receive at least as much or more under the proposed system	100%	100%		99.9%
SPECIAL EDUCATIONAL EXPENDITURES	% of district that will receive at least as much or more under the proposed system	100%	100%		99.7%
	Provides Extra "Weighting" for Educationally Disadvantaged Pupils	Yes	No	No	Yes
	Varies State Contribution to Districts According to Some Form of Regional Cost Differentials	No	Yes	No	No
	Provides Extra Funds for Districts With High Non-educational Expenditures* (i.e. municipal overburden)	No	No	No	No
CONSTITU- TIONAL CON- SIDERATIONS	Existing System Challenged in Court: in process (i); decided in favor of plaintiffs (p); defendants (d)	p	i	i	d
	Proposed System Satisfies Serrano Standard	No	Yes	Yes	Yes

* Non-educational costs are municipal costs which constitute the so-called "municipal overburden" which larger urban centers appear to suffer.

A Note on the Statistics

The school finance data included in the handbook after each state study seeks to indicate, in abbreviated form, the characteristics of the present and proposed school finance systems; in particular, emphasis is placed on the fiscal impact that the proposed systems would have on certain types of school districts. Hopefully, these appendices will permit the interested citizen to understand better the overall links between educational need, fiscal capacity, and tax effort, as well as their relationship to the revenue and expenditure outputs of current school finance systems.

There are any number of ways that the illustrative data can be interpreted or represented. The following are just a few observations that can be made:

- Educational need, as measured by Title I ESEA monies per pupil, is largest in cities and rural districts. Suburbs—both of the fast and slow growth variety—tend to have relatively lower concentrations of educational need than cities and rural areas.
- Fiscal capacity as measured by adjusted gross income per pupil or full value of property per pupil is greater for slow growth suburbs and central cities than for fast growth suburbs and rural areas. Central city wealth may be more apparent than real as recent research has shown,² but clearly there are suburbs that may be in need of expanded external aid as measured by fiscal capacity per pupil. It should also be noted that the property value measure markedly overstates the wealth of rural areas as compared with a personal income measure.
- School tax effort (as contrasted with total tax effort) tends to be greater in suburban areas than in cities and rural areas. Cities often are faced with problems of municipal overburden (that is, they tend to have ex-

² Joel S. Berke and John J. Callahan, "Serrano v. Priest: Milestone or Millstone," *Journal of Public Law*, Vol. 21, No. 1, 1972, pp. 23-72.

tremely high *total tax efforts*³), and rural areas have a fiscal capacity that is too low to permit suburban levels of taxation.

- Educational need, fiscal capacity, and tax effort problems rarely run in the same direction. Of all three types of jurisdictions, central cities, by some measures, have the greatest educational need and *total tax effort* problems. Rural areas tend to have above average concentrations of need and relatively low levels of fiscal capacity. Suburbs on the other hand, often have low educational need, above-average capacity, and high *school* but low *total tax rates*. However, there is considerable variation in fiscal characteristics among suburban jurisdictions as this and other data show. Some suburbs are fiscally more hard-pressed than others; yet, as a class, suburbs probably have the least pressing fiscal problems of the three types of jurisdictions.
- Most of the current aid systems in this report only partially offset variations in fiscal capacity and school tax effort. They do not offset variations in overall tax effort or educational need. Yet, some of the alternative proposals, particularly those in Minnesota and New York, would take these variations into account. Throughout, it must be noted that current external aid is usually less than local revenues raised for education. This fact probably accounts for the present disparities in school finance in the states studied.
- Many expenditure variations may not necessarily be related to educational product, as the data suggests the variation in total expenditures is considerably greater than that in instructional expenditures. If instruction is still considered the means of producing educational excellence, many of the expenditure disparities lose some of their pressing urgency. On the other hand, as supportive expenditures increase the excellence of in-

³ Seymour Sacks, *City Schools/Suburban Schools: A History of Fiscal Conflict* (Syracuse: Syracuse University Press, 1972); and Joel S. Berke, Alan K. Campbell, and Robert J. Goettel, *Financing Equal Educational Opportunity: Alternatives for State Finance* (Berkeley: McCutchan Press, 1972).

struction, the total expenditure disparity is still relevant.

- Most of the alternative finance plans studied would have the effect of reducing the aid and spending gap between central cities and their suburbs and of considerably raising the levels of aid and expenditures of rural areas.

INTRODUCTION

by Anthony Morley

ISSUES AND POSSIBILITIES IN SCHOOL FINANCE

"Crisis!"

Someone has supposedly remarked that a simple solution to the problem of fair pay for state legislators would be to give each of them a dollar every time someone shouts, "Crisis!" in his ears. That would probably send the lawmakers home wealthy; it would certainly lighten the doomsday mood of public debate.

While some crises may be overblown, however, there is really no question that our nation as a whole has entered a critical period regarding public school finance. The paths leading into this period are complex, as are the possible and practical paths leading out of it. Choosing those paths will chiefly be done in the debates of state legislatures, which this handbook is intended to serve. But the basic ingredients of our present crisis are actually quite simple. There are two of them, closely intertwined:

1. There is not enough money for schools—at least never as much as the schools say they require.
2. What money there is, is neither raised fairly nor distributed fairly—at least not fairly enough to satisfy some courts.

We can call these the *adequacy* problem and the *equity* problem. Obviously, in terms of traditional American values, the equity problem is the more serious—this country can manage with less money; it cannot manage with less justice. In reality, however, the two problems aggravate each other. When money is short, unfair ways of raising and spending it seem even more offensive than in times of plenty. Yet practically speaking, it takes new money to redress old inequities. Thus the legislator confronts a dilemma: how to provide new money for *equitable* school finance, when already there is too little existing money for *adequate* school finance. Without exaggeration, that dilemma is a crisis.

Inadequacy in School Funding

At the root of the fiscal inadequacy problem is the fact that school expenditures have been growing much faster than the economy as a whole, and that therefore school costs have begun to outstrip the ability of traditional taxes to cover them. Between 1949 and 1967 school costs rose at an annual rate of 9.8%. In the same period the yearly increase in gross national product was only 6.4%. To make up the difference required that public school spending absorb a steeply increasing proportion of the gross national product—from 2.3% in 1949 to 4.0% in 1967. Measuring the cost-climb for schools against growth in personal income tells the same story: expenditure per pupil grew nearly three times as fast as income per citizen. Therefore taxpayers have had to try harder, increasing state and local school revenues from 4.0% of personal income in 1961 to 4.9% ten years later.

During most of the 1960's people paid these higher taxes with only the normal grumbling that social custom requires. After all, schools were a "good thing" in any community, the country was prosperous, and who could really object to new buildings for expanded enrollments or better salaries for underpaid teachers? But with the coming of the 1970's this happy picture began to change—drastically.

For one thing, there were signs of a striking shift in public attitude toward the schools. Optimism about their fine work was often undermined by disappointing results, appalling drop-out rates, and documented charges that many high school students could barely read. The image of school as a place of order and industry, transmitting a stable culture, was challenged by reports of "student unrest," of our children's rejecting traditional values rather than learning them. Reverence for educators as dedicated professionals suffered from suspicion that teachers were becoming one more pressure group with a hand on the public purse. Assurance that schools were insulated from controversy and animosity was shaken by the discovery that they could become focal points for bitter contention over race, class, morality, and even foreign policy. These shifts of attitude were not uniform or consistent, but they began to add up. They helped erode people's earlier assumption that what the schools say they need, the taxpayers should provide.

Another problem, less philosophical, was that schools faced strong competition for the local tax dollar. Especially in large cities and metropolitan centers, the costs of other public services were also skyrocketing. Welfare, police and firemen, hospitals, sanitation, and public transit were all at least as indispensable as schools in the fight for urban survival, and all could persuasively press their claims.

To pay for those local claims, both state and local taxes had to go up, which they steadily did. State support could come from varying mixes of income and sales taxes, the former usually withheld by employers, the latter paid in hundreds of deceptively small and seemingly painless installments. At the local level, however, there had to be almost total reliance on the property tax, which renters could feel with every increase, and which homeowners could see in stark three or four-figure totals on their annual mortgage statements. Some 90% of school districts levy their own taxes, and in those which do not the proportion of total property tax which goes for schools is usually clearly stated. Unlike the costs of bombers or crop supports or new streetlights, there was nothing invisible about the price tag on education.

Not surprisingly, a growing resistance to high taxes has found popular focus in particular objection to school taxes. Feelings of taxpayer revolt could be effectively expressed in the numerous local referenda which must be held to approve construction bond issues and even operating budgets. The results are clear and sobering. In case after case voters simply refuse to let school budgets rise any higher. Latest figures show that in fiscal 1971 fewer than half (46.7%) the school construction bond issues in the country won approval at the polls—down from 75% in 1965 and 89% in 1960. Schools have suffered in their operating budgets, too. Especially in urban centers such as Detroit, Los Angeles and Cincinnati, teachers have been laid off, class sizes increased, school time curtailed, or experimental programs dropped. The day of easy money for public education is a day of the past.

Inequity in School Funding

One might argue that a spell of stringency would be healthy in education, compelling educators' attention to essential priorities and efficient management after a decade of getting what-

ever they asked. Unfortunately the matter is not that simple. Another question has been raised, more fundamental and of even greater practical consequence than the generosity or skimpiness of school budgets in general. It is the question of equity. When public revenue is raised for schools, is it raised fairly? And when public money is shared among schools, is it shared fairly?

Recent Court Decisions

Within the past year plaintiffs for both students and taxpayers have persuaded courts in five states that the answer to both these questions is "no." They have challenged their states' school finance statutes on constitutional grounds, and won their arguments. One of the cases¹ has been accepted for appeal before the Supreme Court this fall. Since the statutes under challenge are essentially similar in all states except Hawaii, legislators across the country have been quick to see that these decisions have a "landmark" quality. Even if not upheld nationally (although some of them must be, as they are based in part on *state* constitutional provisions), they have set in motion a rethinking of state responsibilities in school finance which is not apt to die away easily.

The first and most famous of the five cases was *Serrano v. Priest*, ruled on by the California Supreme Court at the end of August, 1971. In detailed briefs, the now familiar facts were laid out: The reliance on the local property tax forces some districts to set much higher levies than others, yet typically they receive much less in return. The contrast between affluent Beverly Hills and property-poor Baldwin Park, both in metropolitan Los Angeles, became famous. Beverly Hills' tax rate is less than half what Baldwin Park is willing to bear. Yet the people with lower taxes have more than \$1,200 for each child's schooling, while the people who try harder have less than \$600 per child. So conspicuous and arbitrary a discrimination, argued the plaintiffs, is in fact a denial of equal protection. Taxpayers and children alike, in districts such as Baldwin Park, are being inequitably treated. The state-legislated

¹ *Rodriguez v. San Antonio Independent School District*, 327 F.Supp. 280 (W.D. Texas 1971), probable jurisdiction noted by the U. S. Supreme Court June 7, 1972.

system of school finance, which establishes the inequity, must be changed.

The California Justices agreed. In doing so they stated their opinion that education in the public schools is a "fundamental interest". The Court took care in distinguishing education from other public services, for education, unlike fire protection or sewers, is a service which the state by its own constitution is obligated to serve, and which, as such, may not be conditioned on wealth. To allocate money for schools on the basis of local property values effectively sets just such a condition. "It makes the quality of a child's education a function of the wealth of his parents and neighbors." There is no compelling reason why school taxes should be so raised or so distributed. The state will have to devise a different system.

Barely six weeks after *Serrano*, a federal district court in Minnesota, in *Van Dusartz v. Hatfield*, adopted the California arguments and findings as wholly applicable in that state also. The stance of the state toward its school children, said this judge, must be one of "fiscal neutrality." It is the opposite of neutrality to construct a funding system which rests on disparate tax bases. "This is not the simple instance in which the poor man is injured by his lack of funds. Here the poverty is that of a governmental unit that the state itself has defined and commissioned." By making resources for education a function of that local poverty, the state needlessly violates the equal protection guarantee. Again, the state will have to devise a different system.

Another federal court, this one in Texas, handed down the third *Serrano*-type decision, shortly before the end of 1971. This case, *Rodriguez v. San Antonio Independent School District*, will be heard by the Supreme Court in the October, 1972 term, and thus is likely to become even more familiar than *Serrano* itself. In the argument there is special emphasis on the discriminatory effect of Texas' school finance structure against poor children, rather than simply poor districts. The conclusions of the court are the same, however—namely, that the state's "tax more, spend less system" is unconstitutional and must be changed. In this case, unlike the preceding two, the judges gave the legislature a deadline. Barring reversal in the higher court, Texas legislators must act to change their system by the school year 1973-74.

The only post-Serrano case in which the plaintiffs have failed, so far, is *Spano v. Board of Education*, in Lakeland, New York. In January, 1972, the New York Supreme Court (which actually is not the state's highest tribunal), refused the gauntlet which the other cases had successfully thrown down. It would be inappropriate and imprudent, the *Spano* judge felt, for his court to enter so tangled a thicket as school finance. Among other matters, he was concerned about the effect of a *Serrano*-like decision on bonded debt secured by the *ad valorem* taxes of school districts. The existing school finance system may well be "vestigial, inadequate, and unfair," he conceded, but changing it is a matter for the state legislature or the U.S. Supreme Court.

There was no such hesitation in neighboring New Jersey, when two days later the Superior Court of Hudson County ruled in *Robinson v. Cahill*. Here the plaintiffs were not only parents and property owners, but also the Mayor, City Council, and Board of Education of Jersey City. They named both houses of the state legislature, along with state executive branch officials, as defendants. Their complaint, although it contained a *Serrano*-like claim, emphasized the argument that similarly situated taxpayers ought not to be taxed at different rates for a common state purpose. They also maintained that New Jersey's constitutional mandate for a "thorough and efficient" public school system is thwarted by the inequities of New Jersey's school finance structure. The trial judge agreed with both of these contentions. On grounds of the state constitution he voided the key education finance law (taking care not to vitiate obligations to bondholders), and directed the legislature to produce something better. Assuming he is upheld on state constitutional grounds by the New Jersey Supreme Court (which, given that court's past decisions, is most likely), there is no legal basis for appeal of this decision to the federal level.

A fifth victory was recently registered for the school finance reform movement when a trial judge in Arizona declared that state's school financing system unconstitutional. The decision, captioned *Hollins v. Shofstall*, was patterned closely after the *Serrano* opinion. The court's order permitted the Arizona legislature approximately two years to develop a system not dependent on local wealth for funding public schools.

What the Courts Mean—and What They Do Not Mean

Five strong cases, then, in less than six months' time, have brought the equity problem in school finance to sharp focus, and to unprecedented public attention. Courts in the west, north, southwest, and east have considered typical state statutes and found them wanting. The success of the plaintiffs has inspired forty or more similar lawsuits in at least thirty other states. With variations and embellishments in the argument, but with remarkably similar tables of undisputed data, all of them press the same two points:

- 1) that without reasonable justification, state laws force taxpayers in some communities to pay much more for schools than comparable taxpayers pay for comparable schools in other communities; and
- 2) that without reasonable justification, state laws make available much greater school resources for children in some communities than for comparable children in other communities.

Few people would argue with the facts as presented, in state after state. The courts which have heard them so far (with the somewhat ambiguous exception of New York) have supported the plaintiffs' interpretation that there is an unconstitutional unfairness about the way we finance public schools. New laws must be written.

No court decision so far—and none that anyone anticipates—attempts to spell out what the new laws must say. The point which troubled New York's Supreme Court—that legislative changes are the legislature's prerogative—has been amply respected in all the other cases. Momentous though the judges' rulings may be, they all take the modest route of identifying what a school finance statute may *not* do, rather than positively prescribing any features which it must include. Judge Miles Lord put it most forcefully in his decision in *Van Dusartz v. Hatfield*:

"... it is the singular virtue of the *Serrano* principle that the state remains free to pursue all imaginable interests except that of distributing education according to wealth.

. . . Neither this case nor *Serrano* [nor any subsequent ruling] requires absolute uniformity of school expenditures. On the contrary, the fiscal neutrality principle not only removes discrimination by wealth, but also allows free play to local effort and choice, and openly permits the state to adopt one of many optional school funding systems which do not violate the equal protection clause."

That leaves legislators and governors with responsibility for policy in school finance, and with very broad latitude for thinking through what the policy should be. More particularly, it means that elected state officials have the initiative (and the burden) for practical definition of what is equitable. That is doubtless their most difficult question.

Dimensions of Equity in School Finance

As mentioned several times already, there are two dimensions in which school finance policy must be fair—and in which it is currently unfair. The first is in its distribution of the costs of education. The second is in its distribution of benefits.

Fair distribution of costs means equitable treatment of the taxpayers. Because schools are generally agreed to be of common benefit to all citizens, not just to those who individually use them, we can assume that the taxpayers for education will be all the taxpayers of the state. The first question of equity, then, is a question whether the burden of school costs falls evenly across any given category of taxpayers. This is no problem for any portion of school expenses which is paid from a uniform tax levied statewide. No state income taxpayer in a 3% bracket, for example, pays more or less income tax for schools than any fellow citizen in the same bracket. They are equitably treated in school finance, so far as that tax is concerned. There is a problem, however, for any portion of school expenses which must be paid from a non-uniform tax. All owners of \$20,000 homes do not pay the same amount of property tax for schools, and the differences bear no rational relation to any differences in benefits received. As property taxpayers they are not equitably treated in school finance.

Another aspect of tax equity is the strong agreement among Americans that taxation should be proportional to one's

ability to pay. In any system of school finance where local units must contribute their own taxes to the support of local schools, this principle will require some estimate of each district's ability to pay. The tax burden could then be varied with that ability. At present this type of equity is rarely achieved, and even where an attempt is made, the measure of ability to pay is usually no more sophisticated than property value per pupil. That is far too crude and incomplete a standard for arriving at a community's actual tax capacity to support its schools. To mention only one shortcoming, central cities are relatively rich in real estate and often have relatively few school children. That gives them high ratings in property value per pupil. But they are also relatively overburdened with expensive and necessary municipal services other than education. As a result, their property does not have as much ability to pay for schools as the less valuable, but also less taxed, property in many other communities.

Education tax burdens can be made more equitable, and some of the likely ways for doing it are outlined below. The challenge to legislators—both from the courts and from a growing voter awareness that the tax structure is not fair—is to decide what equity requires in their own states, and then to pass statutes which will bring it about.

Fair distribution of educational benefits, in a democratic society, means making the effort to provide every child with equal educational opportunity. This is a longstanding goal—in fact a fundamental purpose—of free public schools, but that does not make it easy to achieve. Perhaps the most difficult obstacle is the rather wooden (but well-intentioned) notion that equal opportunity exists when all children receive identical educational services. In terms of school finance this would define equity as a matter of spending the same amount (perhaps adjusted for regional cost differentials) on every child. In view of the indefensible disparities in per pupil spending now, the idea has a certain surface attractiveness. It would at least be an improvement over a system which works to short-change so many, so irrationally.

A moment's thought will show, however, that an equal-dollars approach (unless the amount of dollars is extraordinarily high) is inadequate to the goal of equal opportunity. At best, it would produce equality without fairness. Fairness re-

quires recognition that children themselves are not identical, and therefore neither their schooling nor the amounts of money spent on it should be identical. They come to education with different aptitudes, different interests, and from sharply different circumstances. The goal of fairness in public education is that, notwithstanding the differences, all children should stand on an equal footing as they cross the threshold from childhood to independent maturity. They should be equally well equipped to build satisfying adult lives in a free society.

This is an idealistic, egalitarian, democratizing goal, to be sure. It is also a deep-rooted motive force in America's commitment to public schools. Its clear implication for school finance is that those with greater educational need, whether they are educationally disadvantaged or exceptional students, should receive the benefits of greater educational investment. That is easy enough to see in the case of children who are blind or physically handicapped. It is not always so persuasively evident when the marks of educational impediment are poverty, social isolation, or accumulated racial oppression. The challenge to legislators is to decide what educational investment policy will yield the greatest equity dividends in their own states, and then to enact legislation which will make that policy real.

Local Funding: Some Practical Limits

Confronted with the dual crisis of inadequacy and inequity, it is certain that school finance will loom very large on state legislative agendas for the next several years at least. State constitutions, traditions, and realities of our governmental system make it inevitable, desirable, and, indeed to some extent, legally mandatory that financial policies in education will be decided at the state level. In many states the governors will contribute major leadership. But in all states the legislators will cast the deciding votes.

Free public education—often required to be “thorough and efficient” or a “uniform system”—is a self-imposed constitutional obligation in virtually every state. Characteristically the state governments have delegated operating responsibility and much taxing authority to local units. Safeguarding the strengths of local control will doubtless be a high priority in

any fiscal policy. But the states have always shared importantly in both setting standards and providing money for their local school districts. The pre-eminence of the state in education is clear.

One reason is the practical impossibility of resolving the inadequacy/inequity crisis at local levels alone. Quite apart from litigation, state governments have been under year-by-year pressure to increase their general aid to local districts. They alone have the taxing capacity to undergird public schools at the levels now required. With the entry of the courts into school finance affairs, the demand for state-level leadership is even greater. The states alone have the breadth of jurisdiction, combined with closeness to local concerns, to insure fair educational treatment of all their citizens.

Another reason is the extreme unlikelihood that the federal government will step in and take over the states' public school funding responsibilities. Washington's financial role in education has hovered around a mere 7% of total school spending since 1966. It is likely to increase substantially under some form of revenue sharing or other aid to hard-pressed states. Perhaps it will even double or quadruple, as often recommended. But public education will remain a constitutional preserve of the states, and no imaginable amount of federal aid will relieve state legislatures of their task in school finance policy.

DISTRIBUTING THE MONEY

Differential Spending

It has already been emphasized that principles of equity and equal opportunity do not call for equal expenditure for every pupil. Nor has any court required such a rigid standard. On the contrary, there are numerous reasonable factors which would justify some districts (or some schools, or some children) having more money available than others. For instance:

- There are student categories with special instructional needs, requiring school programs more costly than the norm. For the most part these are exceptional children or children with unusual learning problems: the blind or deaf, the emotionally and mentally retarded, those with a non-English mother tongue, etc.

- There are larger student categories whose social and economic circumstances create a general need for extra services from the schools. These include the very poor, children in remote and isolated rural areas, those with malnutrition and chronic health defects and those who spend much of the year in migrant labor camps.
- There are school districts whose unit costs for goods and services are significantly above the median for all districts. Where population is sparse, transportation becomes a major item for every student, and the overhead cost of libraries or laboratories or specialized teachers may be out of proportion to what it is elsewhere. In central cities it is salary-scales, land costs, and repair bills which are out of line.

Still other districts have social characteristics which are regularly accompanied by above-average school expense: crowded housing, one-parent families, tuberculosis, teenage unemployment, etc. The high concentration of disadvantaged children in such areas requires extra-high educational investments.

- And, as already mentioned, a typical fiscal difficulty for city districts is that their local tax base is overloaded with competing requirements for other public services.

It is not difficult to describe generally the factors which call for differential funding in education. Most of them are apparent. It is still extremely difficult, however, to quantify these differences into guidelines for fair and effective distribution of school funds. As pointed out by the President's Commission on School Finance, there is obvious and urgent need for both a cost-of-education index and an education-needs index. With the former, districts could be compared for the purpose of establishing how many dollars each needs in order to purchase a given "market-basket" of goods and services. With the latter, the relative costs of meeting different categories of educational need would be established. If agreed upon and found reliable, the two indices in conjunction would be invaluable aids to those who must set policy in school finance.

Perhaps some individual states will pioneer in developing such cost and need indicators on their own. Meanwhile, legis-

lators are far from helpless. They do have their common sense. They have differing social policy preferences as to which schools or children should be favored with extra resources. They have the testimony and financial experience of schools in their own states and others. They can hammer out their own distribution guidelines—and easily improve on the present pattern of simply giving the rich more.

As a specific aid, the detailed research of the National Education Finance Project has already yielded a preliminary table of relative costs for nine categories of students. In comparison with ordinary pupils in grades one through six, for example, the table shows that kindergarten programs typically have a cost factor of 1.3; compensatory education, 2.0; and junior high school, 1.2. Of course these are not prescriptive figures. Legislators might well make a different value judgment from current practice, and decide, for example, that greater community benefits would result from funding kindergarten or pre-school at 1.8 and compensatory programs at 2.5.

Where these numbers and judgments make a difference is in how the state distributes its aid to local districts. Once one moves beyond a simple equal-dollars-per-child allocation, there are several alternative ways in which typical differences in need and cost might be acknowledged:

- Pupils can be counted (and therefore general aid allocated) on a weighted-category basis. The policy and political questions are what categories to use (grade level? income level? test-score level?), and what weights to assign.
- The state can provide an array of categorical-aid grants targeted on particular types of students (e.g., under-achievers or non-English speaking), or in particular fields of instruction (e.g., reading and math).
- The level of a district's general aid can be keyed to certain socio-economic characteristics of the district as a whole, or of its school population. Family income, median educational level of parents, or infant mortality rates might all be factors in determining how much state funding a district receives. This approach particularly recognizes the out-of-school educational importance of the community in which the school exists.

- A district's aid entitlement could vary with its tax capacity and tax effort, or with its market costs for key educational items. The effort here is essentially to equalize the buying power of local districts, regardless of their local wealth or local price index.

There are advantages and pitfalls in each of these approaches. When features of one are combined with features of another, on top of existing traditions and expectations in a given state, it becomes immensely complex to estimate just what the fiscal impact and distribution effect of any new proposal might be. Legislators must have such estimates, nevertheless, for no state can simply copy another, and even the best intentioned policy plans can backfire when actually applied. It has to be known before the law is passed, for instance, whether favoring AFDC children will have the unintended effect of penalizing the poor in districts where other measures of family poverty are more accurate. In order to know, legislatures must have skilled staff, available time on computers, and adequate comparable data from every district in the state. The inevitable political trade-offs in actually passing legislation will be sounder and longer lasting—and more beneficial to school children—if they can be made in a framework of reliable prediction.

Full State Funding

The principle of full state funding (FSF) is simply that the state should take direct responsibility for distributing (and collecting) an overall education budget. It is important to recognize that all states already take indirect responsibility for funding, by setting the terms and conditions under which local districts levy taxes, and by supplementing local revenue with various forms of state aid. FSF has often been proposed as a way of gaining flexibility in school finance and providing more adequate revenue from a broader tax base. Now it is strongly urged in many quarters as the most promising way of assuring equity as well. Virtually every specific school finance reform proposal, no matter what proportion of total funding the state provides now, calls for some increase in that proportion, though not many call for raising it to 100%.

The three most difficult questions about FSF, regardless of the distribution formula, are these:

- Would FSF give any district less money than it has now? If so, who can be expected to vote for his own "levelling down"?
- Would FSF "level up" all districts which now have less than the highest spending, or all which have less than some amount agreed (except by those with more) to be adequate? If so, where will the new money come from? If not, what is the gain in equity?
- Would local districts be prohibited from taxing themselves to add on to the FSF figure? If not, won't the pattern of wealth-based disparities persist? If so, isn't commendable local initiative being discouraged? And won't wealthy communities find ways around the prohibition anyway?

These questions are not impossible to resolve by a legislature which has imaginative leadership, time to work out effective compromises, and a realistic prospect of new revenues. Grandfather clauses and save-harmless provisions are an obvious concession to the wealthy. Levelling up by specified steps over a short time-certain period may reassure low spenders and stretch out the tax increase. Add-ons to state support can be power-equalized (see below, pages 29-30), made contingent on referenda, or both. One can speculate that courts will not be rigidly purist where there is a serious effort to achieve equity through full state funding. But one can also speculate that without strong, serious leadership, legislatures will avoid full state funding as long as possible.

More State Funding—Less Local Control?

The simple answer to this question is that it depends entirely on what the legislators decide. Significantly, extensive research by the President's Commission found no correlation between degree of state funding and degree of state control over school programs. A recent conference of southeastern educators and legislators turned up few complaints or fears about

centralized control, even though that region generally displays much higher percentages of state support than other parts of the country. Of course any legislature could pay the bills and strip local school boards of their voice in curriculum, personnel selection, or pedagogical style. But legislatures could do that now, without paying any more bills than they do.

There seems little danger of a direct connection between school finance reform and an erosion of policy control at the local level. If anything, school boards might become more active and influential in educational issues if they were relieved of the need to discuss millage rates. That does not mean, however, that a move toward state funding would not provoke some important long-range questions for local school governance.

- If the district tax base becomes unimportant or even irrelevant, would a chief rationale for existing boundaries be removed? Would new consolidations begin to emerge, or new fragmentations? Would districts tend to become larger, as regional service centers, while governance and policy shifted toward the parents and staff in individual schools?
- Would incentive funding from the state, rewarding emphasis in particular program areas, tend to replace rules and regulations as the major means of influencing local policy?
- In response to budgetary pressures and demand for accountability, would the state require increased monitoring and closer evaluation of local programs?

A related point is that any degree of new leadership by the states in school finance will probably require a strengthening of their state executive departments in education. In some states this upgrading will be carried out directly in the governor's office. In others it will be an opportunity for the state education department. Whatever the configuration and politics, it is important for legislators to recognize that reform cannot be accomplished without the administrative instruments to implement it.

What About Capital Budgets?

No legislature will be able to turn its attention to school finance without running into the question of what to do about capital costs. Many states provide some construction aid. At least one (Maryland) has already moved to full state funding of construction in an effort to relieve pressure on local taxes for operation. Capital budgets are indeed a major ingredient in both the adequacy and the equity dimensions of school finance. To revise the way they are funded will require as much attention to detail and policy as is now being given to the task of equalizing operating expenditures.

Power Equalizing: Local Tax Burden and Yield

Under a full state funding plan the state itself would both collect and distribute all (or almost all) the revenues for education. All such proposals call for uniform taxes—property and otherwise—levied statewide, and therefore solve quite simply the problem of equity for taxpayers in regard to school finance.

Redistricting for Equal Wealth Districts

If local levies continue to finance any substantial portion of school costs, however, the equity problem must be met some other way. One approach might be to equalize the property tax base for schools by dividing the state into a few large taxing regions, each with approximately the same value of taxable property per pupil. The voters or taxing authorities of all such regions would then have equal resources to levy against, and could set their tax rates at the levels required to yield the amount of revenue desired. Probably because it seems to subordinate local districts to an artificially constructed intermediate layer of government, this regionalization approach has attracted little support so far.

District Power Equalizing

Much more widely discussed is another proposal which would give all communities equal access to property tax revenue, but do so without rearranging tax bases or tax boundaries at all. What it attempts is to equalize all districts' power

to obtain tax receipts, regardless of their property wealth or property poverty. Under district power equalizing, as this plan is called, the state would guarantee that every district taxing its property at a given rate would receive the same number of dollars per pupil in return for that effort. The heart of any power equalizing plan would be a schedule, enacted by the legislature, relating local tax effort to guaranteed tax receipts. Each mill of the local levy, for instance, might have the stipulated "power" to bring in \$25 per pupil in the district. If the district had low property values, and the mill levy actually raised less than \$25, the state would make up the difference. If the mill levy raised more than \$25, the state would recapture the excess and use it for redistribution.

Power equalizing formulas can be combined with flat grants from state taxes, minimum effort requirements, dis-incentives to expenditure above a certain level, and any number of refinements. In all variations, though, school funding is a function of tax effort, not tax wealth, and local districts retain the two-part choice of how much effort they want to make and how much budget they want per-pupil. The local property tax continues as a major revenue producer for schools, but state policy determines how that tax is imposed and how much it will yield.

Needless to say, power equalizing has few attractions for those districts whose property would bring more revenue per mill than the formula allowed. In most instances that includes not only the privileged enclaves of the rich, but central cities with high-value property rolls and low-income school rolls. Unless drastically offset by large categorical grants, or compensatory weightings in flat-grant aid, or a factor acknowledging tax overburden for other municipal costs, power equalizing for urban districts could well mean higher taxes and less money—less power, that is, to make school finance reform the servant of school performance reform.

RAISING THE MONEY

Tax policy questions are every bit as complicated as school policy questions, and of course are intertwined with them in the crisis of school finance. In all likelihood most legislatures will find it impossible to take up school finance reform without

being pushed toward major revision of their total state-local fiscal system. And in many states, tax reform will be the route by which legislators come to questions of education policy.

Traditionally in this country the *ad valorem* property tax has been the mainstay of local government. Some states protect this mainstay by constitutional prohibition of any state-levied property tax. Since education has been the chief business of local government, the property tax has been in large part a tax earmarked for schools, and is thought of as such. The tradition developed, of course, in a time when property—especially land—was a much truer and more comprehensive measure of wealth than it is today. In any event, the sufficiency of property as a tax base for schools has long since disappeared. Education now draws heavily from other revenue sources in order to survive at all. Although property remains virtually the only source for local school funding, in most states' school finance picture it is actually just one ingredient of a tax mix which also includes sales, excise, and (increasingly) income taxes.

That being the case, it seems superfluous to continue assuming that schools have a special claim on property tax receipts. If the states are to expand their role in school finance, they will inevitably seek ways to recapture some local property tax money or to pre-empt part of that tax base with property taxes of their own. Such statewide receipts, however, could be mingled with other state revenues as a single pool for common state purposes. There is no need to earmark one tax for schools, another for health services, a third for the highway patrol, and so forth. There is no particularly appropriate tax for any fundamental state function.

The point is not made just for theoretical neatness. It is made in support of maximum fiscal flexibility for state government. School finance ought not to hinder such flexibility, and with no earmarking of "school taxes", it would not. Legislators could then freely debate the best and most feasible revenue package for their state, without entangling that subject (difficult enough in itself) in their quite different debate about the best and most feasible school funding policies.

MINNESOTA

by Anthony Morley

When the state legislature convened for its biennial session in January, 1971, Minnesota had a school finance system fairly typical of the rest of the nation. Statewide, not counting federal grants, something under half the money for public schools came from general state revenues, and something over half from local school district property tax levies. The state-local ratio (always difficult to calculate precisely) was about 45:55.

When the legislature adjourned — ten months, one gubernatorial veto, two extra sessions, one influential court decision, and innumerable hours of lobbying, costing-out, trade-off discussions, and conference committee arguments later — Minnesota still had a state-local school finance system, but it was no longer typical. The ratio had been dramatically reversed. For fiscal 1973, according to best estimates, the state-house share will be 70% or more, and local districts will have to raise only 30% or less. Still, H.F. 262, the bill which finally passed and was signed, is a revision of what existed, not a totally new start: it did not revolutionize, it reformed.

This chapter reports on the substance of that reform, and the zig-zag political process by which it came about.

THE STATE-AID PACKAGE AND TAX STRUCTURE BEFORE 1971

Minnesota's state support of its 438 local school districts was (and still is) a combination of flat grants, a foundation aid plan, and categorical grants for particular types of programs. During 1970-71 it looked like this:

Flat grant: Every district in the state received \$141 per resident pupil (K-12) in average daily attendance (ADA). Tax-base did not affect entitlement to this subsidy, but it was subject to downward adjustment in those very few districts which made less tax effort or spent less per pupil than the foundation minimums. For purposes of the flat grant, pupils were weighted by grade level: They were counted as 0.5 in kindergarten, 1.0 in grades 1-6, 1.4 in grades 7-12, and 1.5 in

vocational-technical schools. The flat grant accounted for approximately 48% of foundation program payments to local school districts.

In addition, school boards received \$30 for each child between the ages of six and sixteen in their district from earmarked receipts from the 3% state sales tax (only sixteen-year-olds actually in school were counted). Finally, each district received reimbursement from the state to replace revenues lost when certain types of business personal property were removed from the tax rolls in 1967.

Foundation aid: The state guaranteed foundation for public school operating budgets in 1970-71 was \$404 per pupil in ADA (pupil count weighted as above). Local districts were required to tax at least 20 mills on the equalized assessed valuation of their property. (These mills, called EARC mills after the Equalization and Review Committee, are equivalent on the average to about one-third of the auditor's mills actually levied in the counties.) If 20 EARC mills plus the \$141 flat grant did not come up to \$404 per pupil, the state provided the difference. Every district did tax more than the minimum, and computation of receipts from the minimum millage qualified 368 of them (out of 438) for foundation aid beyond the flat grant. These foundation grants accounted for approximately 33% of state payments for local schools.

The formula, then, for foundation aid, with flat grant minimum, was

$$\begin{aligned} &(\text{weighted ADA} \times \$404) - (\text{revenue from 20 EARC mills}) \\ &\qquad\qquad\qquad \text{equals} \\ &\text{state aid, but in no case less than \$141} \end{aligned}$$

Categorical aid: The chief categorical aid programs in Minnesota were partial reimbursements for transportation, special classes for the handicapped, and vocational education. There was a small supplement (\$500,000) for AFDC pupils in the three large cities. All told, categorical programs amounted to about 20% of total state aid.

Money to pay for these various state aids came from Minnesota's general tax revenues. The chief money raisers were a 3% state sales tax, state personal and corporate income taxes, and excise taxes. They produced, respectively, 18%, 45% and

7% of the total state operating budget for all purposes. Elementary and secondary education, in turn, took 36% of the overall state tax receipts. The only tax earmarked for education was a portion of the sales tax, paid directly to districts in the form of per capita aid. The state 45% of public school expense, in turn, took about 20% of the total state operating budget.

At the local level, school support came almost entirely from the property tax. A wide range of EARC valuations per pupil (from \$854 to \$30,236) accompanied an equally striking range of both local mill levies (from 30 EARC mills to more than 100) and local per-pupil expenditures (from \$384 to \$1,052). Inexorable arithmetic forced a pattern of poor districts with high taxes and rich districts with low taxes. Since the statewide average was about \$710, there could be little equalizing effect in the \$404 guaranteed foundation; and, of course, the flat grant provision actually increased disparities by giving rich districts an extra subsidy while adding nothing to the foundation already guaranteed to poor districts.

PRESSURE FOR SCHOOL FINANCE REFORM

There was no great head of steam for school finance reform in Minnesota in 1970. The state's tradition of support for public schools was still strong. While voter resistance to local tax levies and bond issues was increasing, there were no signs that it stemmed from discontent with the schools as such. While there were inequities a-plenty between rich districts and poor, no *Serrano*-type decisions or publicity had yet dramatized them in the public eye. No major district was threatened with bankruptcy. None was seething with tension over teachers' demands, student unrest, racial hostilities, poor reading scores, community control. Some people were concerned, active, and taking sides in all these areas, of course, but for the electorate in general, school issues and budgets to deal with them were simply not very high on the agenda. And since the public was not exercised, neither were the legislators.

The people's chief concern was taxes, and controversy centered on how money was raised rather than on how it was spent. Since so much tax money went for education (53% of local levies, 36% of statewide collections), there

was no way that tax worries could not eventually involve schools. But it was tax problems which came first, and education problems second—an order of concern that shaped both the process and the content of school finance reform in Minnesota.

As in other states, local residential property taxes had risen steeply during the 1960's, and thus both parties were under pressure to provide some property tax relief by the time of the 1967 legislative session. Democratic-farmer-labor representatives (DLF) urged increases in a progressive state income tax as the solution. However, Republican legislators, a comfortable majority in both houses, preferred a statewide sales tax and, over deep-seated DFL opposition to any sales tax, enacted a 3% sales tax and abolished all local taxes on business personal property.

The 1967 "Tax Reform and Relief Act" earmarked some of the sales tax for per-capita payments to school districts, as already mentioned. It also reimbursed the districts some \$40 million dollars each year for income they would have had from business personal property taxes. (The amount of reimbursement was based on 1967 business inventories, and thus bore less and less relationship to current economic activity or the needs of any district.) Most importantly, the 1967 law gave homeowners a credit for 35% of their real estate tax (excluding levies for bonded debt), up to a \$250 maximum. Using sales tax receipts, the state made up this credit by dividing the amounts claimed between local municipalities and local school districts—two-thirds and one-third in the three large cities; equal shares in the rest of the state.

All these features were intended to lessen the burden of local property taxes, but the practical effect seemed, in fact, to increase property taxes. With the "homesteader's credit," in particular, school boards and town councils could raise the rates and still make new taxes look like a bargain: a dollar of income for only sixty-five cents on the actual tax bill. In any event, the year after tax relief saw the sharpest property tax rise in Minnesota history—the hikes largely for school districts committing themselves to higher teacher salaries. So despite the changes of 1967, by 1970 property taxes were higher than ever, and homeowners renewed their demands for tax relief.

In the 1970 gubernatorial race, tax policy was bound to be an issue. Wendell Anderson, a state legislator from St. Paul nominated by the DLF, determined to make it the central issue. Douglas Head, Republican nominee and former attorney-general, helped focus the tax question as pre-eminently a school finance question.

Anderson pitched his campaign to the tax-burdened blue-collar homeowner. Without being very specific, he promised a better mix of taxes for people caught between inflation and recession. The Republicans had had their chance in 1967, he said, and only business interests had really benefited. It was a class appeal, along typical lines, on economic issues.

In a mid-campaign debate before the Citizens' League of Minneapolis-St. Paul, the candidates focussed on education funding policy. One League recommendation was that the state should genuinely equalize education aid by assuming the total operating costs of local school districts, possibly by imposing a uniform statewide property tax.

Anderson explicitly endorsed the League's recommendation for equalized school support. State funding by means of a state property levy, he added, could be a possible way to accomplish the goal.

Head was more guarded. On reflection, he treated Anderson's endorsement as an opportunity to go on the offensive against the DFL in regard to taxes. Two days following the Citizens' League debate, Head attacked his opponent for even considering a statewide property tax. State funding of the schools, he implied, would cost far more than mixed state-local funding. Anderson stuck to his endorsement. While still pushing general tax reform, and always charging the GOP with favoritism to business, he let the specific issue of school finance become more and more visible. By the close of the campaign, his promises of property tax relief and of fairer funding for schools were inseparably linked.

On election day Anderson won easily, and DFL candidates even came close to capturing the historically Republican legislature. In the new House, Republicans had only a 70-65 margin, and in the Senate less than that, 34-33. Without having stressed education at all in the early campaign, along the way to the statehouse Anderson and the DLF had apparently picked up a mandate for school finance reform.

GOVERNOR ANDERSON'S "FAIR SCHOOL FINANCE PLAN"

In his first budget address, in January, 1971, Governor Anderson offered a "Fair School Finance Plan"—the first such plan ever presented by a Minnesota Governor. Traditionally, the House Education Committee, working closely with staff professionals in the State Education Department, wrote the appropriations bill parcelling out the money designated by finance committees. Now Anderson was bringing tax politics and education politics together into the legislative arena.

The budget address outlined Anderson's view of the inadequacies of the overall state fiscal system, with its heavy reliance on the local property tax. With the per-pupil costs of education, the most expensive public service, averaging \$300 more than the maximum guaranteed state aid of \$404, local districts were pushed to intolerable property tax levels.

Anderson urged tax relief through a policy of limiting the amount of revenue derived from property taxes and meeting most of the costs of education from state non-property sources. His proposal called for the state-funded, non-property share of school operating costs to rise from the 1970-71 level of 43% to 70% by 1972-73.

Beyond the issue of tax relief, of course, there remained the problem of inequities in the burden of raising the local share (still 30% by 1972-73 under the Anderson proposal). Still eight months before the *Serrano* decision, Anderson's school aid formula was aimed at redressing the imbalance.

The Proposal for School Finance Reform

The governor planned a two year transition period to implement his proposal in the following way:

1. The foundation level for state supported expenditures per pupil would be set at the Education Department's estimated statewide average of actual operating costs for each year. These figures were \$780 for 1971-72 and \$819 for 1972-73—approximately double the existing foundation of \$404.
2. For the first year the local tax-effort requirement would also double, to 40 EARC mills (still well below the statewide average); in the second year it would drop to 33½ mills.

3. Since any millage imposed above the minimum would reduce state aid by as many dollars as it raised, in principle the local levy minimum would also become a local levy maximum. If this principle were strictly adhered to, all districts would soon have the same property tax rate, and Minnesota would have enacted a statewide property levy without quite calling it that. In actuality the Anderson proposal required several major exceptions to the uniformity principle:

a) In an attempt to compensate Minneapolis, St. Paul and Duluth for municipal tax overburden, Anderson proposed that these cities would receive in the second year full foundation aid with only $28\frac{1}{2}$ mills as their EARC education levy. In effect, the city government would have five mills extra for other needs.

b) Lest any district be levelled down in faculty or programs, a grandfather clause was proposed for all which had been spending above the average. They could continue local taxes at whatever millage (above $33\frac{1}{2}$) was required to maintain existing expenditures, plus a cost-of-living increase. Their state aid, of course, would still be pegged to the \$819 average.

c) There was also an exception at the low-spending end of the spectrum. Instead of instantly levelling up all districts spending less than the state-wide average, Anderson proposed to stretch the equalizing process over six years. In the first year a low-spending district could advance one-sixth of the dollar distance between its previous year's actual per-pupil cost and the current year's estimated statewide average. In 1972-73 they could close the remaining gap by two-sixths, and so forth. The practical effect would be to start their state-aid foundation guarantee below the average, and bring it up in six annual steps. A proportionate initial increase and the same gradual increase, would apply also to each such district's required local mill levy.

d) Finally, if any district wanted to add on still more to its allowable maximum school millage, it could do so by a referendum.

4. Only in the first year would the Anderson plan have kept a minimum flat grant (raised to \$215 from \$141 per

pupil in ADA) for every district. In 1972-73 it would be dropped, and state aid determined by the formula alone.

5. The greatly increased state aid was still to be distributed on the basis of average daily attendance, with weighted pupil counts the same as before.

6. Per-pupil payments from the sales tax and reimbursements for the business property exempted in 1967 would be abandoned.

How Reforms Would Be Financed

This plan required \$390 million of new state money for education over the biennium. The governor emphasized that the amount was no more than expected cost increases under the old plan. So in a very real sense, he argued, the proposal was for \$390 million of property tax relief.

Nevertheless, achieving that relief through so dramatic an increase in the state share of school funding required relieving some non-property taxes. New or expanded state programs in addition to school aid required a grand total of \$762 million in new revenue—no small portion (if granted) of Minnesota's first \$3 billion biennial budget.

Anderson's tax proposals, to a Republican legislature, were in the best DFL tradition. Fully 80% of the new money was to come from increased personal and corporate income taxes. For most of the remainder he would hike excise taxes on cigarettes and liquor. There was no mention of increasing the sales tax.

THE LEGISLATIVE RESPONSE

With proposals this specific, this far-reaching, and this expensive laid clearly on the table, it was time for getting down to brass tacks in the Minnesota political process. Governor Anderson—aggressive and articulate, with a personal staff to match—had thus used his first days in office to press for turning around the tax structure and for a major shift in the approach to local responsibility for school receipts. He could claim a mandate of sorts; he could hold center-stage in the media; he could define the agenda for debate.

The opposition in the legislature, with prerogatives, powers, and status of its own and claims to closer touch with

grassroots sentiments, could amend, bottle up, or replace what the governor proposed. And there were many special interest groups which felt that they would be affected by some aspect of the school funding and tax debate. It took ten full months to develop the dialogue which led to Minnesota's resolution of the school finance issues.

First, the governor's proposals were drafted in bill form. Costing out the fiscal effects for every school district showed a need for modifications even before formal debate began. Throughout the spring, testimony was heard by the education and finance committees of both houses, and alternative bills were introduced to counter the administration effort. When the administration bill came to a vote in the House, it was defeated, and a more successful bill did not emerge. At adjournment of the regular session in May, there was no new law for either taxes or school aid.

The legislature was called into extra session during June and July and a "Senate Summit Bill," which was pushed by senior Republican leadership, got through the upper chamber. This bill was acceptable to the governor but not to Republicans in the House. The representatives narrowly rejected the Senators' work and passed a 130-page tax and school-aid bill of their own, basically the old foundation formula with a bit more money attached. The Senate acquiesced, and on the 67th day of the extra session Anderson's proposals were finally scrapped, and Minnesota had the House bill for law.

Governor Anderson vetoed the new bill, angrily denouncing those provisions which assured that "the higher your income and the wealthier your community, the less you pay and the more you get." With the legislature set to reconvene in October, Anderson asked the leadership to appoint a special ten-member Tax Conference Committee, which would go to work immediately on a new compromise that the full legislature could pass in "no more than a day."

Once the legislature had reassembled, seven days of virtually non-stop negotiation and compromise (around the governor's

dining-room table) produced House File 262. The "October Compromise," as it is called, cleared both chambers and was signed on October 30th.

THE ROAD TO COMPROMISE

In addition to the governor's strong initiative, there were at least two major strands in the political dynamic of this struggle: the internal life of the legislature itself and the external influence of interest groups and lobbyists from around the state.

As mentioned before, both House and Senate were much more closely divided, between Conservatives and DFL, than before. With almost a third of the legislators newly elected, and with much of the old-line leadership gone, there was inevitable jockeying for power among the members throughout the session. Questions of what positions to take on taxation and school aid sometimes became questions of how to maneuver for influence and stature among fellow lawmakers.

The balance of power was especially uncertain in the Senate, once dominated by a few Conservatives and now divided between 33 Conservatives and 33 DFL, with one independent who voted with the Conservatives. The Conservative leaders were experienced and strong, but of a different sort from the people who had controlled things before. For one thing, they knew that the Senate as a whole now shared many of the views on tax reform which had elected Governor Anderson. For another, both the president pro-tem and some key committee chairmen generally shared those views themselves. Specifically, they personally favored school aid equalization. They were in the liberal-Republican tradition, the sort of men who were comfortable with Citizens' League perspectives and oriented primarily toward achieving harmonious bipartisan rationality in government affairs. They were certainly not partial to the Governor's soak-the-rich rhetoric, but they were not apt to meet compromise with intransigence, either.

The situation in the House was rather different. Though the Conservative majority was slim (70-65), it was still enough for

determined Conservative leadership to win in crucial tests of strength—such as the rejection of the “Senate Summit Bill” in July. The House leadership, moreover, appeared to want such tests as opportunities to put a brash young governor in his place. The House Education Committee chairman, in particular, resisted having his committee (and the Education Department as well) pushed to the fringes of policy power. The governor did not lack for quality and willing support among DFL representatives, but they did not quite have the votes in the House, and that nearly cost the governor his program. Things were so balanced as to almost guarantee legislative immobility. On one side was a vigorous Democratic chief executive with a persuasive staff and an arsenal of data from his own state planning agency; on the other, knowledgeable and motivated Republican opposition, one in effective control of the lower chamber; and, in the middle, a mediating Senate, inclined toward change but separated by party allegiance from the governor and by temperament from the House majority. Clearly the fulcrum of forces in this triangle was the Senate. And in the opinion of almost all observers, it was Senate Republican leadership which ultimately managed the October Compromise.

Pressures, Changes, Trade-Offs and Compromises: The various bills at issue in this legislature involved not just education matters but taxes which would have a direct effect on scores of governmental units in addition to school districts. Therefore, virtually every citizens’ group or special purpose organization could claim a legitimate self-interest in trying to influence the legislative outcome. A great many did try—some with general expressions of support or opposition, some by focussing on particular provisions they wanted or feared. Of the four large metropolitan dailies, two (in St. Paul) opposed the administration proposals, and two (in Minneapolis) favored them. Business and banking interests testified against income taxes (especially corporate) and in favor of a higher sales tax. The state AFL-CIO and the Farmers Union argued just the opposite. The Minnesota Federation of Teachers went on record for equalized school aid and a statewide property

levy. The Minnesota Education Association took no position. The School Boards Association, unofficially, worked against any restriction or removal of local taxing powers. School superintendents testified individually, according to how the proposed formulas would affect their districts. City government officials backed all moves to increase municipal aid. Rural groups were wary in general of an Anderson effort to favor urban areas. The efforts of these groups were reflected in the modifications of the final bill.

AFDC Pupil Count: Explicitly acknowledging municipal tax overburden, the original administration proposal provided a lower millage requirement for education in the three large cities. To Minneapolis public schools, though, this favor was unwelcome. They saw it as a millage ceiling (which it was), potentially blocking the schools from getting their fair share of total city taxes. A large city's true educational overburden, they argued, is its disproportionate share of disadvantaged children whose educational costs are greater anywhere. The three big cities enroll 56% of Minnesota's AFDC pupils. Minneapolis lobbyists claimed that the best way to aid center-city districts directly, and at the same time do justice to the 42% of AFDC children who live in rural and suburban school districts, was not by a tax break, but by extra weighting for disadvantaged pupils in the count of pupil-units. The argument prevailed. The millage differential for first-class cities was dropped, and a 1.5 weight for each AFDC pupil put in its place. For Minneapolis alone the change increased state aid by \$4.5 million.

Agricultural Property Differential: Rural opposition to the urban-oriented AFDC provision was strong and emotional, even in the face of clear cash benefits which the weighted pupil count would bring to depressed country districts. To help overcome this rural resistance, Minneapolis schools rounded up urban support for some vocational and special education provisions which would particularly help the rural and suburban districts. However, the key trade-off was the administration offer of a farmland tax benefit to balance cities' educational benefit. Minnesota agricultural property had

long been taxed at a lower rate for school support than other property. This "ag differential," required by the state, threw an extra burden on non-farm homeowners and businesses in any heavily agricultural district. The administration agreed to a provision for the state to make up the ag differential by direct payment to the districts.

ADM for ADA: With bi-partisan support, the basis for state aid was shifted from average attendance to average membership so that schools would no longer be penalized for sick or truant or snowbound children. Urban districts, with higher absence rates, would gain most from this change, but virtually everyone agreed it made sense.

Measuring Local Wealth: The Citizens' League and urban government lobbyists pressed for adjustments in the EARC measure of school district tax base through formulas which would take into account municipal overburden. But such formulas seemed impossibly complex, and EARC remained unaltered, while the cities' financial problems were addressed by other additions to the whole tax package. The House DFL leadership tacked on a 30% increase (from \$98 million to \$125 million) in aid to non-school local governments. This aid is on a per-capita basis, with municipalities in the seven-county Twin Cities metropolitan area receiving \$2 more per person than the rest of the state. Moreover, the distribution is proportionate to each government's non-school property levy so that the center cities with extra tax burden get extra state aid. And as additional acknowledgment of metropolitan interdependence, 40% of all future growth in property assessments in these counties is to be treated as their common tax base. Besides serving big-city interests well, the effect is consistent with Governor Anderson's basic intent: to reduce property taxes and shift the costs of local services to a statewide taxing package.

No Losers: A self-explanatory political principle in the administration approach was that no school district should lose money under the new formula. Therefore, the bill included the grandfather provision against levelling-down. Costing-out the proposals, however, showed that districts with declining

enrollments would lose substantial aid, without any corresponding drop in costs. Not only some rural areas, but central cities like Minneapolis and St. Paul were in this category. The governor needed their votes, too, so, to lessen the impact of population loss, it was agreed that such districts could use a two-year average in counting pupils for foundation aid. Then, to close off any further possibility of someone's being hurt, the administration added a "save harmless" clause. It said that each district's new foundation aid must at least equal the sum of previous foundation aid and per capita sales tax payments. That still was not protective enough. In final bargaining the new age differential payments and the old exempt property reimbursements had to be added to the annual guarantee.

Flat Grants: Without any educational rationale, automatic flat grants provide a demonstrably dis-equalizing bonus to the wealthy. The governor proposed dropping them after 1971-72. However, legislators insisted on something for everybody, and flat grant aid continues, at \$215 per-pupil, for at least this biennium. As the level of foundation support approaches actual operating costs, the number of districts for which the \$215 is an unearned bonus will drop. By the funding terms of the "October Compromise," some 76 districts will be specifically favored by the flat grant in 1971-72, but only 19 in 1972-73.

How High a Foundation?: The governor proposed to set the foundation target level at the actual statewide average district cost per-pupil—\$780 in the first year, \$819 in the second (actually, the shift from ADA to ADM as the pupil count would have lowered these amounts slightly). This near-doubling of the existing foundation (\$404 per pupil) seemed staggering to many people inside and outside the legislature. And the DFL did not have enough votes to put that great an increase all on the state income tax. Major compromise was inevitable on both the amount of foundation aid and the source of new revenue to cover it. The "October Compromise" provided a \$600-per-pupil foundation the first year and \$750 per pupil the second. The required local tax effort was set at 30 EARC mills. Additionally, the DFL agreed to raise the sales tax.

Slowing Down the Levelling-up: The DFL had to make another concession in the plan to put below-average districts on an escalator leading to substantial parity across the state in six years time. Though a gradualist plan, its probable cost scared the legislators, and they came up with a complicated substitute. Essentially, it keeps a tax-poor, below-average district where it has been relative to others by limiting all districts to the same cost-of-living-per-pupil increase (\$87) over the biennium. There will be some levelling-up effect in 1972-73, because \$87 is a greater proportionate jump in a low budget than in a high one. Also, in calculating foundation aid, an above-average district must subtract any special education aid from its per-pupil average cost figure. The net effect is to tighten the levy limitation in some grandfathered districts (if they happen to be heavily aided for handicapped children), and to allow it to rise slightly in low-spending districts. That is only minimally equalizing, a far cry from the original proposal.

State Taxes: The final package of new state taxes, of course, was also a compromise. The governor had asked in January for \$762 million new revenue in a \$3-billion biennium budget. In October he actually got \$581 million new revenue in a \$2.9-billion budget. Over a third of the new money is a result of raising the income tax on corporations and banks. These were concessions won with difficulty from the Conservatives. In return, the DFL agreed to broaden the sales tax and let it rise from 3% to 4%, thereby creating another quarter or more of the new money. The remainder comes from excises and miscellaneous items.

Over half the increase will go to school districts under the new formula for state aid. By virtue of this aid, and by the limitations on local school levies, property taxes for the state as a whole will drop almost 20%. The figures are well below what the governor first hoped, but they are far above what he threw back to the legislature with his August veto, and they clearly indicate a major change in Minnesota fiscal policy.

PRESENT IMPACT AND FUTURE PROSPECTS

The new fiscal policy resulting from the Minnesota tax and school finance debate has:

- 1) reduced the homeowner's property tax;
- 2) levelled out disparities in the burden of property tax;
and
- 3) forestalled any new escalation of property taxes and any re-emergence of the disparities.

To the very large extent that the property tax is a school tax, achieving these objectives will influence the state's educational policy as well.

Homeowners' property taxes have already dropped, virtually everywhere in the state, by an average of 11.5%, though the fact that the drop is not much larger reflects how strong the upward pressure on property tax is. The overall reduction comes from a much larger percentage reduction in school operating levies, and (to a lesser degree) from the relief of municipal levies provided by increased municipal aid. Meanwhile, the rise in other local property taxes (for such commitments as school debt service, pensions, metropolitan transit, or county detention homes) is continuing, eating into the reduction afforded by increased school operating aid from the state. In most places these other parts of any taxpayer's total property levy have risen more than originally estimated by the state planning agency, a difference which explains why the average reduction is 11.5%, instead of the predicted 20%. In some areas the lower school millage is almost wholly offset by increases in other categories. In a very few there are even slightly higher rates than before.

Against this must be set the unquestioned fact that without the new law both school and municipal taxes would have risen substantially. Relative to what this year's tax bills *would* have been, property tax savings are far more impressive than 11.5%. "Would have been," however, is difficult to spotlight politically, and even a realist can be disappointed that, with sales and income taxes up, property taxes still seem far from low.

In any event, there is not likely to be much pressure to return to heavier reliance on the local school tax. Indeed, the tangible benefits of this biennium may make it persuasive to propose still greater operating aid for schools, a similar tax-sharing approach to capital costs, a further infusion of money into non-school budgets, or some combination of all three. It is probable that schools (and millage elections) will no longer be the taxpayer's whipping boy. Though still the largest item, they are now a smaller proportion of local government costs, and limits have been set on how fast their spending can increase.

A second aim of the new legislation—to diminish the tax disparities from one district to another—is being partially accomplished, though local tax rates are still far from equal. In the Twin Cities metropolitan area, for instance, the spread between highest and lowest total local tax rates has been reduced from 251 mills to 160—or by more than a third. The narrowing of the gap results chiefly from new state help to schools in high-tax/low-expenditure districts (typically the modest-income bedroom suburbs) which benefit most from the new school aid formula. Low-tax/high-expenditure districts achieve very little tax reduction. Thus, the ceiling on tax rates is lowered, and the floor remains about the same. Of course, a gap remains. Some homeowners in the metropolitan area still pay 1.5 times the rate of others in total taxes, and more than twice the rate for schools; it is still the wealthier districts which pay the lower rates. This limited progress toward tax-rate equalization is not at all matched by progress toward equalization of resources for school children. As already explained, there is to be very little levelling-up of what poorer districts can spend, and no levelling-down of what wealthier districts already spend. Optimists will say that greater equity in revenue raising is the prerequisite for equity in revenue distribution—and that some gains have been made here. Pessimists will say that mollifying homeowner-taxpayers distracts attention from the needs of children in school—and that now the state has simply taken over a pattern of serving these needs inequitably. Who is right will become much clearer in the next round of actions among the governor, the legislature, and the courts.

To keep property taxes from resuming their upward climb, Minnesota now has a statewide limit on what may be levied for

school operation. The limit also strongly constrains property-rich districts from maintaining their budget advantage over the property-poor, and protects poor districts from the extra high millage rates they had been forced to adopt before. Even with grandfather clauses and save-harmless provisions, it does operate to flatten out disparities of tax burden.

The impact on actual school receipts and expenditures is much less striking, for the "October compromise" was finally more concerned with keeping all costs down than with helping low-spenders catch up. In this biennium there will not be a highly visible equalizing effect on per-pupil expenditures, though a number of below-average districts which were near the limit of what their taxpayers could bear have probably been saved from falling still further behind.

In the legislative session next biennium, there will presumably be a strong effort to remove expenditure disparities as well as tax-rate disparities. Perhaps by that time, though, some property-rich districts may be trying just as hard to have their spending limits relaxed. The two efforts cannot both succeed, and again the relationship of fair taxes and fair education will become an issue for debate.

Two factors argue that when that debate emerges in the legislature again, in 1973, it will begin at a very different point from where it began in 1971. One is the influence of court decisions on how Minnesota legislators think about school finance. Judge Miles Lord handed down his *Serrano*-type opinion in *Van Dusartz v. Hatfield* during the closing days of the Tax Conference Committee's October negotiations. The immediate effect of that decision was a strengthening of the impetus for a new school aid law. It had the longer-range effect of making Minnesota lawmakers particularly aware of the equity issues involved in their responsibility for school finance policy. The *Van Dusartz* case is now inactive, but interest in its arguments has been heightened by subsequent decisions and by the intervention of Governor Anderson as an *amicus* in the Supreme Court hearing of *Rodriguez v. San Antonio Independent School District*. The new Minnesota law, despite its improvement over the old, almost certainly does not meet the *Serrano* principle which Judge Lord adopted—"that the level of spending for a child's education

may not be a function of wealth other than the wealth of the state as a whole." Even should the Supreme Court decide against *Rodriguez* early in 1973, the effect would probably be only to slow down Minnesota's momentum toward reform, not to reverse it.

The second factor has to do with that momentum. After ten months of political stalemate, Minnesota moved in a clear direction toward strong control of the total tax system by the state legislature. Fair taxation is not possible, it was finally agreed, without an even-handed, state-level tax policy that avoids having major taxes set by multiple and unequal jurisdictions.

The principle of fair taxation as a state responsibility has been established. The question in 1973 will be how to continue movement along the direction chosen in 1971. There will doubtless be pressure to equalize further the school tax burden and discussion of the idea that there should be equity in the spending of money as well as in the collection of money.

TABLE 1
MINNESOTA

District (type)*	Need	Capacity		Effort	
	Title I per pupil (1968-69)	Property Value per pupil (1970)	Adjusted Gross Income per pupil (1966-67)	School Tax Burden (%) (1968-69)	School Tax Rate (mills) (1970)
St. Paul (1)	30.49	16,668	16,581	2.54	25.2
Minneapolis (1)	40.32	19,010	16,958	3.09	27.6
Duluth (1)	2.56	8,805	8,960	4.13	42.0
Anoka (2)	5.47	4,964	6,111	4.37	53.9
White Bear Lake (2)	12.53	5,747	9,287	3.07	49.6
Bloomington (2)	3.95	8,857	7,767	4.66	40.9
Edina (3)	1.31	14,074	17,007	2.97	35.9
St. Louis Park (3)	6.79	14,491	17,242	3.50	41.6
Hopkins (3)	5.60	12,943	10,823	4.95	41.4
St. Cloud (4)	18.79	8,412	9,633	2.69	30.8
Middle River (5)	29.54	4,142	4,510	4.37	47.6
Ashby (5)	20.12	10,842	3,923	6.97	25.2
Mean	14.79	10,746	10,733	3.94	38.5
Maximum/Minimum Ratio	30.8/1	4.6/1	3.8/1	2.7/1	2.1/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

TABLE 2
MINNESOTA

District (type)*	Revenue/Pupil			Expenditures/Pupil	
	Local (1968-69)	State (1968-69)	Federal (1968-69)	Total (1968-69)	Instructional (1968-69)
St. Paul (1)	421	248	69	698	539
Minneapolis (1)	524	212	81	1,384	561
Duluth (1)	370	301	69	1,007	526
Anoka (2)	267	390	34	1,178	458
White Bear Lake (2)	285	389	34	986	523
Bloomington (2)	362	372	25	1,467	533
Edina (3)	506	248	11	1,249	554
St. Louis Park (3)	603	318	20	1,192	654
Hopkins (3)	536	360	36	1,564	639
St. Cloud (4)	259	421	53	1,536	496
Middle River (5)	197	512	91	2,614	590
Ashby (5)	273	290	37	662	448
Mean	384	338	47	1,294	543
Maximum/Minimum	2.7/1	2.1/1	8.3/1	3.9/1	1.5/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

TABLE 3
MINNESOTA

District (type)*	Latest Aid/Pupil (1970-71)	Alternative A ** Aid/Pupil (1971-72)	Alternative B *** Aid/Pupil (1971-72)
St. Paul (1)	\$237	\$330	\$332
Minneapolis (1)	239	360	337
Duluth (1)	354	491	484
Anoka (2)	413	629	623
White Bear Lake (2)	398	514	525
Bloomington (2)	365	365	448
Edina (3)	246	268	346
St. Louis Park (3)	271	271	318
Hopkins (3)	327	327	411
St. Cloud (4)	369	581	589
Middle River (5)	545	762	700
Ashby (5)	359	628	562
Mean	344	461	473
Maximum/Minimum	2.3/1	2.3/1	2.0/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

A "Central City" district is defined as having a total population greater than 250,000. "Fast Growth Suburbs" are located close to Central Cities and have population growth rates higher than the suburban median. "Slow Growth Suburbs" are also located near Central Cities and indicate a population growth between 1960 and 1970 below the median of all suburban districts in the sample. Slow Growth Suburbs include wealthy residential communities and suburbs with substantial concentrations of commerce or industry. "Independent City" districts are those which have populations between 10,000 and 250,000 and are located beyond built-up Central City areas. Finally, "Rural" districts are those which contain no communities with populations as large as 10,000.

Note: A word about the sources of data is in order. In the short period of time in which this data was collected, it was necessary to compile pertinent school finance data from a variety of sources. All the data on Table 2 as well as the Title I revenue per pupil data on Table 1 was derived from the U. S. Office of Education Report, *Statistics of Local Public Systems: Finances, 1968-1969*. Adjusted Gross Income Per Pupil was derived from the National Educational Finance Project work, *Personal Income by School District, 1966-1967*, Property Value Per Pupil data on Table 1 was collected from the various published and unpublished reports of the state departments of education in the various states, and data on school tax rates and school tax burdens was derived by dividing local tax revenues obtained from USOE data into Adjusted Gross Income and Property Value in the respective school districts. Data on the effects of alternative school finance plans in Table 3 was developed by the Minnesota Department of Education and illustrates the alternative aid distributions under the "October Compromise Bill" (H. F. 262) and H. F. 5 (the bill that was vetoed by Governor Anderson).

In all, data on more than 25 school finance variables was collected in a total sample of 53 districts in Minnesota. A more comprehensive analysis of this data is currently being prepared and will be included in an appendix which will subsequently be published as a separate volume.

•• Alternative A: Mandated 30 mill local levy yielding a minimum of \$215/pupil unit (secondary pupils 1.4 units, AFDC pupils .5 additional units). This is the "October Compromise Bill."

••• Alternative B: Mandated 22 mill local levy yielding \$180 per pupil unit (secondary pupils 1.35 units). This is H.F. 5, the bill that passed the legislature but was vetoed by the Governor.

MICHIGAN

by Clay Hiles

The move toward revision of the system of financing public education is still in the proposal stage in Michigan. However, a concerted long-term reform effort, led by a governor who has made education his major theme, may break through the political deadlock this year. This November's ballot will include two constitutional amendments that would dictate certain reforms in the tax system and pave the way for others in the method of raising and distributing funds among the local school districts. In addition, the Republican governor and the Democratic attorney-general have joined as plaintiffs in a lawsuit¹ seeking a declaration that the existing school finance system violates both the United States and Michigan constitutions.

BACKGROUND TO REFORM: CURRENT INEQUITIES

The current method of financing Michigan schools relies heavily on local property taxes and results in gross and irrational discrepancies in per-pupil funding around the state. Some general operating funds for Michigan schools under the current scheme consist of state and, to a much smaller extent, federal aid, but the primary source of money for the schools is the property tax levied in the local district:

¹ *Milliken v. Green*. An earlier court challenge by the Detroit school board was initiated in 1968, but later dropped. The basic claim of the Detroit suit, that states should fund education on the basis of individual student needs, was rejected by the Supreme Court in *McInnis v. Ogilvie*.

**General Fund Revenues of Local School Districts
In 1970-71 By Major Sources ²**

	<u>Revenue (Millions)</u>
Local Sources	
Property taxes ³	\$931.5
Tuition from patrons	5.5
Revenue from revolving funds ⁴	76.6
All other local revenues	23.4
Total Revenue from Local Sources	\$1,037.0
Intermediate Sources	3.4
State Aid	754.8
Federal Aid	81.0
Gifts and Bequests	2.2
Total General Fund Revenues of Local Districts	\$1,878.4
Add State Aid for Pensions and Social Security	155.2
Total Revenues for General Purposes	\$2,033.6

In 1970-71 local property taxes provided about 46% of all general fund revenues; state aid provided about 45%; federal aid, about 4%; and all other sources combined, about 5%.

Michigan's 2.2 million public school children are educated in 624 school districts, each of which sets a property tax rate for education in millage elections. The state has made an attempt at equalization of general operating funds by employing a formula which has reduced, but certainly not elimi-

² Citizens Research Council of Michigan, *An Analysis of the Governor's Proposals for Financing Elementary-Secondary Public School Operating Costs and a Comparison with the Democratic Party Proposal*, p. 12.

³ The \$931.5 million reported by local school districts as property tax revenues includes collections from the current tax levy, collection of prior year taxes and interest and penalties on delinquent taxes. It also includes any taxes levied by local school districts for community college operations and for public library operations where the local school districts provide these services.

⁴ Revolving fund revenue includes revenues from food services, book stores and student body activities.

nated, the disparities among districts. The formula works in this way:

The total assessed property valuation in each district is "equalized" (adjusted to compensate for varying local assessment practices) to obtain a figure representing 50% of the current market values of real property. This amount, reduced to a per-pupil figure, is the state equalized valuation per pupil (SEV) in the district. The state's per-pupil contribution is determined by multiplying the SEV by a "deductible millage" (specified by law) and subtracting it from a "gross allowance" per pupil (also specified by law).⁵

For fiscal year 1971-72, the legislature specified two sets of "gross allowance" and "deductible millage" figures, one set for SEV's above \$17,000 and the other for SEV's below that breakpoint:

	SEV's Below \$17,000	SEV's Above \$17,000
Gross Allowance	\$661.50	\$559.50
Deductible Millage	20	14

An SEV of exactly \$17,000 would, under either formula, provide \$321.50 per pupil in general state aid. If the local school millage rate were 26 mills, the 1970-71 statewide average, the combined local and general state aid per pupil would be \$763.50.⁶ However, as the SEV moved away from \$17,000 in either direction, the amounts per pupil, calculated according to the appropriate formula (with the local millage rate held constant at 26 mills), would diverge more and more markedly. These formulas, applied to different SEV's, would pro-

⁵ State aid = gross allowance - (SEV × deductible millage)

⁶ Combined local and general state aid =
[gross allowance - (SEV × deductible millage)] +
(local assessed valuation × local millage rate)

For the purposes of these illustrations, the local assessed valuation is assumed to be the same as SEV, so that the illustration equation is: combined local and general state aid = [gross allowance - (SEV × deductible millage)] + (SEV × local millage rate). Hence, in a \$17,000-SEV, 26-mill district, the two formulas would work this way:

- a) Combined local and state general aid = [\$661.50 - (\$17,000 × .020)] + (\$17,000 × .026) = \$763.50
- b) Combined local and state general aid = [\$559.50 - (\$17,000 × .014)] + (\$17,000 × .026) = \$763.50.

vide different combined state and local per-pupil funds in the following pattern (which stays within the actual range of Michigan variations) if the state average of 26 mills were the school tax rate in each case:

	SEV	Combined Local & General State Per-Pupil Funds
A	\$ 6,000	\$ 697.50
B	10,000	721.50
C	17,000	763.50
D	20,000	799.50
E	40,000	1,040.00
F	60,000	1,560.00

Of course, local tax rates do vary considerably, but even greatly increased millages (which may be much harder for a low-SEV district to bear if the low SEV coincides with low income) can not overcome the low-SEV disadvantage. In order to match District E's per-pupil expenditures (see chart, above), District A would need a millage rate of 83.83; and an owner of real estate assessed at \$20,000 would pay \$1,676 in school property taxes in District A and \$520 in District B to secure equivalent per-pupil education funds.

In addition to the revenue from local property taxes and state aid, calculated according to the above formulas, there are state grants for special categories of educational expenditures: transportation, vocational education, compensatory education, remedial reading and other special education programs.

The result of this scheme of education funding, a grossly uneven distribution of the state's educational expenditures, is shown in Table 4.

TABLE 4
FINANCIAL DATA FOR SELECTED SCHOOL DISTRICTS, 1970-71*

District	SEV/Pupil	School Mills Levied**	Instructional Cost Per Pupil	Available Dollars Per Pupil Exclusive of Federal and State Categorical Grants	Total Cost Per Pupil	Average Teacher Salary
River Rouge	\$56,726	20.9	\$810.72	\$1,251.00	\$1,259.49	\$13,223
Ann Arbor	25,642	32.55	809.10	1,066.00	1,091.69	11,380
East Lansing	22,584	30.4	762.12	953.00	1,080.83	9,844
Lansing	18,828	30.85	679.34	766.00	953.71	11,422
Detroit	17,720	20.76	583.49	654.00	806.71	11,118
Redford Union	11,433	35.90	612.57	830.00	838.17	11,080
Inkster	6,637	25.9	528.30	672.00	717.56	10,925

* Pinner, Collins and Sederbuns, *Decision Making on the Reform of Educational Finances in Michigan*, A Report to the Urban Institute (1971), p. 38; Michigan Bureau of Programs and Budget, *School Finance Reform in Michigan* (1972), pp. 30, 40, 41. The state aid included in these figures was based on the 1970-71 aid formula:

SEV's Below \$15,500	SEV's Above \$15,500
\$623	\$530.50
20	14

Gross allowance
Deductible Millage

** Since only school millage is shown, the variations in total millage (and the extent of municipal overburden) are not indicated.

The typical problem in presenting proposals for educational funding reform in Michigan is to get them considered according to their own particular merits. The past few years of attempting reform in Michigan have illustrated the need to:

- a) clarify proposals so that potential supporters will not be discouraged by fuzzy intricacies in the plans;
- b) relate funding proposals to taxing plans which will have sufficient support for passage;
- c) avoid allowing the proposals to become embroiled (or lost) in political fights over other issues; and
- d) avoid the identification of proposals with unpopular policies or actions, like busing or "governmental centralization," which can be linked to any discussion of "education."

The efforts sponsored by Governor Milliken got underway with a certain amount of political thundering and partisan grumbling. The governor, a former member of the state legislature, has long been interested in education, and he has undoubtedly recognized the political implications and possibilities of education finance reform. He has, of course, been inclined to make this issue his issue. The Democrats, however, are not eager to abandon their claims to this area. The legislature and State Board of Education, controlled by the Democrats, commissioned in 1966 an analysis of educational opportunity in the state. This study, completed in December, 1967, and known as the Thomas Report,⁷ noted the marked variations in educational opportunity in Michigan and recommended that the state increase its role in equalizing the amount of money available for public education throughout the state. In response to this suggestion, various proposals were offered, including a plan urged by the Michigan Association of Professors of Educational Administration, whose essential feature, an equalizing distribution scheme based on classroom units, eventually became the central characteristic of Governor Milliken's proposals.

⁷ Alan Thomas, *School Finance and Educational Opportunity In Michigan* (Lansing: Michigan Department of Education, 1968).

COORDINATES OF REFORM: TAXATION AND DISTRIBUTION

Against this initial backdrop of partisan efforts to steal the first scene in the school finance reform show, the governor's advisors worked out a set of proposals for consideration by the 1969-70 legislature:

1. Drastic reduction of inequality of expenditures and inequity of tax burdens between school districts, a goal to be accomplished by:
 - a) establishing a statewide property tax to replace the local property tax except for an optional 3 mill enrichment tax (with an equalized yield based on effort rather than district property value); and
 - b) guaranteeing a fixed allowance for each student.
2. Introduction of a more "rational" education program that would, through comprehensive student evaluation procedures, direct resources toward the achievement of rationally determined objectives. A more efficient organization of schools into larger, consolidated districts was also an aim.
3. Increased accountability in the operation of Michigan's public education programs, by clarifying the lines of authority and responsibility in the administration of the state's schools. The elected partisan State Board of Education and their appointed State Superintendent would be replaced by a gubernatorial appointee who would have administrative charge of the system. The enlarged school districts, to be called regions, would be headed by gubernatorial appointees.

Milliken did not offer an equally comprehensive taxation system to replace the lost property tax or the increases in overall educational expenditure that would be required by the equalization scheme. Besides the statewide property tax, he mentioned only an increase in the cigarette tax (earmarked for education) and a temporary reduction in the property tax credits against income tax payments.

A POLITICAL DEAD-END FOR THE INITIAL REFORM

Milliken's plans did not get far. The educational community did not like the plan for centralization of power; and it had been somewhat antagonized by the governor's tendency to exclude it from his policymaking. The retention of a property tax (despite the shift to its statewide equalization) and the reduction in property tax credits alienated rural interests.

The furor over aid to parochial schools and proposals to decentralize the schools in Detroit absorbed the legislators' energy and interest and blunted the relatively limited move toward equalization of taxation and school funding. Urban-oriented Democrats and rural Republicans did agree on a plan for providing aid to parochial schools and for allowing local districts to replace the local property tax with a local income tax (with state equalization of the yield from either of these local taxes). However, new taxes necessary to fund this program failed to pass.

ANOTHER PLAN: NEW (SOMEWHAT) AND IMPROVED (MOSTLY)

Milliken was re-elected in the fall of 1970, but the legislature remained under Democratic control. In view of the failure of his earlier plan and in recognition of the fact that compromises with the Democratic leaders would be necessary, Milliken altered and reorganized his goals for the 1971 legislative session, although his education package maintained its major themes:

- *Equality of expenditure and equality of tax burden:* The governor's strategy was to shift the focus from distribution to taxation. The provisions were
 - a) elimination of the local property tax;
 - b) allowance of a local 6-mill enrichment tax (double the previous 3-mill provision) whose yield would be equalized by the state;

- c) replacement of the lost individual property tax revenues through a 2.3% increase in the personal income tax (added to his request for a hike from 2.6% to 3.6% just to finance the general state budget, this would have resulted in a 5.9% flat rate personal income tax);^a and
 - d) replacing the lost business property tax through a 2% value added tax.
- *Increased rationality:* The governor called for consolidation so that all districts offered K-12 programs. However, in an effort to remove the apparent threat of centralization in the earlier proposals, the plan was altered to eliminate the provision for governor-appointed regional directors and for regional control over school district budgets. The consolidated units were to be twice as numerous as (and therefore much smaller than) those in the initial plan.
 - *Greater accountability:* Because of the reaction against his plan to place the school system directly under the administrative direction of a gubernatorial appointee, Milliken decided to retain the state school board which would appoint the state administrator. However, instead of being elected (and, therefore, directly entangled in partisan politics), the board would be appointed by the governor. Accountability was urged less as a system of more centralized authority and responsibility, and more as a program of assessment, including assessment in which the local school district would play a significant part.

POLITICAL STALEMATE

This set of proposals seemed generally acceptable at the outset. There was a widely recognized need for reform of an overall educational funding system that relied on the relatively inelastic property tax, which, in turn, was dependent

^a A graduated income tax is currently prohibited by the Michigan constitution.

on the vagaries of local millage elections. And there was no strong opposition to the particular reform measures suggested. However, as in the previous year, school finance issues became overwhelmed by the political battle over state taxing and spending policy as a whole. The political factions in the legislature made agreement on any changes in school funding contingent on the acceptance of their pet programs. The speaker of the House, Democrat William Ryan from Detroit, insisted on increased welfare spending and a graduated income tax. His condition for going ahead on the state budget was a constitutional amendment (to be decided in a referendum election) not only to *eliminate* the existing constitutional prohibition against a graduated income tax, but to *require* a graduated income tax. A Republican bloc in the legislature based acceptance of the governor's budget package on immediate property tax relief—through a fall, 1971, referendum. Additionally, the Republicans insisted on immediate implementation (by August 1, 1971) of the income tax rise in order to balance the budget.

The political bargaining was in a context of considerable time pressure, including two deadlines, the beginning of the fiscal year July 1, and the early fall statutory deadline for placing constitutional amendments on a November ballot. By June, a few concessions had been made:

- The governor, who had pledged no new taxes before 1972, agreed to the August 1 income tax hike.
- The Democrats, who had wanted to keep the property tax for significant operating millage, agreed on 10 mills for school operations.

A special committee of twelve legislators (three members of each party in each house) was suggested by Milliken to work out the details of a compromise on long-range policy as well as to break the stalemate on short-term budget bargaining. This attempt at a short-cut through the legislative operations was not successful. While the legislative session was disrupted and delayed, the committee failed to negotiate any long-term agreements.

The collapse of this committee in mid-July left the state with an immediate need for action on tax levels for the fiscal year, which had already begun, and for support of the schools, which were soon to open. By the end of July, a new tax bill was accepted. It raised personal and corporate income taxes to finance the state for another year—with some increased spending—and it responded to the demand for property tax relief by providing that the tax increase would be void if a constitutional amendment limiting property taxes was not on the ballot by November, 1972.

Right after House approval of this tax bill, Milliken accepted a proposal by Ryan for a constitutional amendment combining property tax limitation and removal of the graduated income tax prohibition (a modification of Ryan's earlier insistence on a required graduated income tax). However, the resolution to put the amendment before the voters was barely passed by the House and remained stuck in a Senate committee until the deadline for putting such an amendment on a November ballot had passed. The debates over tax policy, which failed to arrive at long-term solutions, had again obscured the issue of reforming the system of distributing funds for education in Michigan.

PROGRESS IN 1972

This year Governor Milliken has focussed on the details of both issues—sources of revenue for schools and the distribution of that revenue among the districts. The specifics of his proposals have been clarified, and the Democrats have recommended an alternative similar in its approach to both distribution and taxation.

In view of the legislature's failure to agree on a constitutional amendment altering taxation policy, Milliken's forces launched a successful drive to obtain the necessary signatures (nearly 300,000) to have two amendments placed on the ballot this November. One amendment would simply remove the state constitutional ban on a graduated income tax. The

other, directed at the details of tax and school funding reform, would:

- a) reduce the present constitutional property tax limit from 50 mills to 26 mills, and, within that limit,
 - allow (contingent on voter approval) a maximum of 6 mills, equalized throughout the state, for enrichment in any local school district;
 - restrict to $4\frac{1}{2}$ mills the amount of taxes imposed locally for vocational, compensatory and special education, and intermediate school districts;
 - limit the taxing power of counties to a total of 8 mills and that of townships to $1\frac{1}{2}$ mills;
 - allow an additional 6 mills, contingent on voter approval;
- b) exclude from these restrictions property taxes levied for debt service and property taxes imposed "by any city, village, charter county, charter township, other charter authority or other authority, the tax limitations of which are provided by charter or by general law";
- c) require the legislature to establish a system of taxation and distribution of school funds "to assure equal and quality educational opportunity for all students"; and
- d) require the legislature to establish a method of support for intermediate school districts, vocational education, special education and compensatory education.

The proposed constitutional requirement that the legislature establish an "equal opportunity" program for distributing school funds would presumably be satisfied by the governor's proposals for a rational statewide system of distribution, supported by new non-local sources of revenue. Under Milliken's proposal,

- a) the state would take over basic elementary-secondary school operating costs under a foundation program which would distribute state funds to local school dis-

tricts (separate allocations for professional services, non-professional services and non-salary costs);

- b) the state would provide aid to local school districts for transportation; and
- c) local districts, in accordance with the proposed constitutional amendment's limitations, could, with voter approval, levy up to 6 mills (equalized) for elementary and secondary school enrichment; and "any taxing unit" could levy up to 4½ mills (not equalized) without voter approval for vocational, special, and compensatory education and intermediate school districts.

The most striking features of the governor's plan are its attempt to recognize, through a personnel unit formula, very fine variations among local school districts in the costs of "equal opportunity" and its allowance of a limited, equalized local add-on.

The governor's foundation formula would have the state provide funds to hire up to 47 professional employees per 1,000 pupils enrolled (or a pupil:professional ratio of 21:1). The basis of support for local school districts would be a professional service allowance which would vary among the districts according to regional variations in salary levels and the experience and training of the professional employees. The existing 59 intermediate school districts would be the "regions." A base professional allowance would be determined for each region with individual salary requirements related to it according to an adjustment for experience and training. The reimbursement to each district would be the base professional allowance (for the region in which it was located) adjusted by the experience-training factor of its professional employees.

In 1970-71 about 41% of the pupils in the state were enrolled in districts with a professional:pupil ratio greater than 47:1000. Under the governor's proposed formula, all of these districts (as well as the districts with a current ratio below 47:100) could provide more than 47 professionals per 1000 students by obtaining voter approval to use the enrichment millage allowance. Only 1% of the students were in districts where the enrichment allowance would be insufficient to

provide a per-pupil expenditure level equal to or greater than the current level. These districts would be "grandfathered" to maintain their high level of expenditure.

The governor's proposal calls for a non-professional service allowance for each district of 20% of the professional service allowance before any adjustments for the experience-training factor or any fringe benefit allowance. Non-salary costs would be covered by a statewide allowance of \$100 per pupil.

All of these funds would be allotted in a lump sum to the district. The question of local control would be answered by leaving to the local district the responsibility for hiring and for setting salary levels and schedules (with any collective bargaining at the local level) within the limits of the professional service allowance for the district.

The governor's office has estimated the public elementary-secondary education operating costs under Milliken's proposals and compared them to present costs, as shown in Table 5.

TABLE 5
ESTIMATED EXPENDITURES BY SOURCE *
(In Millions of Dollars)

	70-71	Current 71-72	Model 71-72	Difference Between Current and Model for 1971-72
<i>Local Sources</i>				
Basic Program	904	1,000 **	0 ***	-1,000
Transportation	30	32.5	0	- 32.5
Enrichment Program	N/A	N/A	100	+ 100
Total Local Funds	934	1,032.5	100	- 932.5
<i>State Sources</i>				
Basic Program	740	810	1,793 °	+ 983
Transportation	30	32.5	70	+ 37.5
Enrichment Program	N/A	N/A	50 †	+ 50
Total State Funds	770	842.5	1,913 °	+1,070.5 °
TOTAL STATE AND LOCAL SOURCES	1,704	1,875 ‡ (10.0)	2,013 ‡° (18.1)	+ 138 \$ (8.1)
% Increase				

* Michigan Bureau of Programs and Budget, p. 54; federal funds not included.

** This assumes a 7% increase in SEV and a 3.1% increase in millage rate over the 1970-71 levels.

*** Represents the shift from the property tax to the state income tax.

† This figure assumes that districts with programs (i.e. staff adequacy ratios) above the basic program provided in this model will choose to maintain their program through the enrichment option.

‡ This assumes an increase in enrollment of 32,000 students over the 1970-71 level.

§ The difference between the current system and the model for 1971-72 excluding property tax relief is as follows:

Net Increase in State funds	\$ 38 million
Net Increase in Local funds	100 million
Total Increase in expenditures	\$138 million

° Pension and social security costs are apparently not included.

The governor's revenue proposals to replace the property tax for the great bulk of school support deal separately with replacing the tax revenues from residential and agricultural property and business property.

The \$600 million now derived from residential and agricultural property taxes could be replaced, the governor estimates, by a 2.3% increase in the personal income tax, from 3.9% to 6.2%. The \$500 million now obtained through the tax on business property could be replaced by a 2% value added tax. These two changes would cover the nearly \$1,100 million rise in state funding.

The effect on individuals of the personal income tax hike would depend on the relationship, for each person, between income and property value—and current local millage. Obviously, those in a low-property value, high-income category would pay more, while people with relatively modest incomes and high property value—farmers, for instance—would experience considerable tax relief. Similarly, there would be variations in the effect on business of the shift from the property tax to a value added tax, depending on the proportion of value added by different types of business in relation to property value and current local millage.

Beyond these proposals to amend the constitution and to pass legislation to reform the system of taxation and the method of distributing school funds, the governor and the state's attorney general have sought relief in the courts.⁹ Claiming that the current system of financing education violates the equal protection requirements of both the U.S. and Michigan constitutions, they have asked the Michigan Supreme Court to take the position of the landmark *Serrano* court, that the quality of a child's education may not be a function of the wealth of his local district. A decision in the Michigan suit, *Milliken v. Green*, is expected by the end of the summer of 1972.

⁹ Milliken is the first governor to be a plaintiff in a school finance reform lawsuit.

In any event, in Michigan the groundwork has been laid for restructuring the entire system of funding public schools, a transformation urged by the desire for fairness, compelled by the political necessity of property tax relief and perhaps soon imposed by constitutional law. The forward motion of school finance reform, repeatedly halted and diverted by political roadblocks, has carried the politicians and, probably, the voters far enough now to make major transformation almost certain.

TABLE 6
MICHIGAN

District (type)*	Need	Capacity		Effort	
	Title I per pupil (1968-69)	Property Value per pupil (1968-69)	Adjusted Gross Income per pupil (1966-67)	School Tax Burden (%) (1968-69)	School Tax Rate (mills) (1968-69)
Detroit (1)	41.61	16,797	14,833	2.62	23.1
Lansing (1)	11.25	17,390	12,100	3.98	27.7
Kalamazoo (1)	18.32	19,652	17,914	3.04	27.7
Dearborn Heights (2)	4.41	7,260	7,306	3.08	31.0
Portage (2)	2.59	14,304	6,001	7.76	32.6
Farmington (2)	7.10	12,733	11,965	3.77	35.4
East Detroit (3)	.66	10,139	12,619	2.03	25.2
Grosse Pointe (3)	0	29,070	29,392	2.87	29.1
Grand Ledge (3)	.83	9,324	8,362	2.18	19.5
Battle Creek (4)	22.75	18,166	11,510	4.28	27.1
Burt Twp. (5)	17.82	26,811	4,079	12.94	19.7
Peck (5)	20.45	10,070	4,057	4.02	16.2
Norway-Vulcan (5)	14.89	10,263	8,280	3.66	29.5
Mean	12.32	15,976	11,678	4.33	26.4
Maximum/Minimum Ratio	50.1/1	3.1/1	7.2/1	6.4/1	2.2/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

TABLE 7
MICHIGAN

District (type)*	Revenue/Pupil			Expenditures/Pupil	
	Local (1968-69)	State (1968-69)	Federal (1968-69)	Total (1968-69)	Instructional (1968-69)
Detroit (1)	388	342	101	1,019	543
Lansing (1)	481	329	36	1,564	589
Kalamazoo (1)	544	323	63	968	615
Dearborn Heights (2)	225	417	7	908	434
Portage (2)	466	275	12	932	531
Farmington (2)	451	334	15	1,695	514
East Detroit (3)	256	375	11	819	470
Grosse Pointe (3)	845	246	5	1,458	669
Grand Ledge (3)	182	373	6	722	350
Battle Creek (4)	493	345	76	1,014	591
Burt Twp. (5)	528	287	109	1,168	594
Peck (5)	163	362	31	658	266
Norway-Vulcan (5)	303	386	26	718	449
Mean	419	334	39	1,077	522
Maximum/Minimum	5.2/1	1.7/1	21.8/1	2.6/1	1.9/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

TABLE 8
MICHIGAN

District (type) *	Latest Expenditure/Pupil (1970-71)	Alternative A ** Expenditure/Pupil (1970-71)	Alternative B *** Expenditure/Pupil (1970-71)
Detroit (1)	\$654	\$890	\$1,070
Lansing (1)	726	823	1,003
Kalamazoo (1)	910	789	969
Dearborn Heights (2)	688	826	1,006
Portage (2)	745	773	953
Farmington (2)	816	871	1,051
East Detroit (3)	788	849	1,029
Grosse Pointe (3)	1,062	923	1,107
Grand Ledge (3)	640	703	883
Battle Creek (4)	818	768	948
Burt Twp. (5)	N.A.	N.A.	N.A.
Peck (5)	N.A.	N.A.	N.A.
Norway-Vulcan (5)	699	810	990
Mean	777	820	1,001
Maximum/Minimum	1.7/1	1.3/1	1.3/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

A "Central City" district is defined as having a total population greater than 250,000. "Fast Growth Suburbs" are located close to Central Cities and have population growth rates higher than the suburban median. "Slow Growth Suburbs" are also located near Central Cities and indicate a population growth between 1960 and 1970 below the median of all suburban districts in the sample. Slow Growth Suburbs include wealthy residential communities and suburbs with substantial concentrations of commerce or industry. "Independent City" districts are those which have populations between 10,000 and 250,000 and are located beyond built-up Central City areas. Finally, "Rural" districts are those which contain no communities with populations as large as 10,000.

Note: A word about the sources of data is in order. In the short period of time in which this data was collected, it was necessary to compile pertinent school finance data from a variety of sources. All the data on Table 7, as well as the Title I revenue per pupil data on Table 6, was derived from the U.S. Office of Education Report, *Statistics of Local Public Systems: Finances, 1968-1969*. Adjusted Gross Income Per Pupil was derived from the National Educational Finance Project work, *Personal Income by School District, 1966-1967*. Property Value Per Pupil data on Table 6 was collected from the various published and unpublished reports of the state departments of education in the various states, and data on school tax rates and school tax burdens was derived by dividing local tax revenues obtained from USOE data into Adjusted Gross Income and Property Value in the respective school districts. Table 8 data was taken from a report entitled, *School Finance Reform in Michigan* (Lansing: Office of the Governor, 1972).

In all, data on more than 25 school finance variables was collected in a total sample of 70 districts in Michigan. A more comprehensive analysis of this data is currently being prepared and will be included in an appendix which will subsequently be published as a separate volume.

•• Alternative A: Governor's Finance Plan to permit all districts to have a staff pupil ratio of 47 teachers per 1,000 pupils.

••• Alternative B: Alternative A plus an optional six mill supplementary local levy.

KANSAS

by Robert Norris

In early 1972, after a frustrating period of rising property taxes, declining state aid to education, several legislative studies of school finance, various legislative proposals from interest groups, and a growing concern among educators and legislators about the inequality in the distribution of education funds in Kansas, Senate Bill 716, the *School District Equalization Act*, was offered as an answer to these problems.

This bill, commonly referred to as the "district power equalizing" plan, was the first plan submitted to the legislature that attempted to remove a school district's wealth as the major determinant of its operating funds for schools. It was considered by some legislators to be not only an answer to the dissatisfaction with the current system of financing public schools, but also an answer to the issues raised by the *Serrano* decision in California.

The legislation did not pass. In fact, it did not get out of the Senate Education Committee. However, momentum for change has been established in Kansas, though it is difficult to predict when the changes will actually pass. There is some hesitancy among legislators because of uncertainty about the Supreme Court's pending *Rodriguez* decision. It is likely that the degree of change finally adopted in Kansas will be greatly affected by the *Rodriguez* decision and by decisions in local *Serrano*-like cases.

This chapter describes the nature of the system of financing public primary and secondary education in Kansas, the forces at work to change that system, the events leading up to the drafting of new proposals and some estimates of what the future will hold.

CURRENT SCHOOL FINANCING SYSTEM

The basic program of state aid to public education in Kansas, a foundation plan passed in 1965, was designed to

- a) equalize per-pupil expenditures among districts by distributing relatively less state aid in counties with higher income and property wealth; and

- b) reward districts that strive to improve educational quality by hiring and retaining highly qualified teachers.

A foundation support level—the “state guarantee”—is determined for each district according to two principal factors:

- teacher training and experience (“criteria of quality” or COQ)*
- pupil/teacher ratio (PTR)*

To assure local districts the state guarantee, the state supplements local school funding. It does so according to a formula based on a district's portion of the county taxing ability (in terms of both property and income); that is, the state attempts to make up the difference between the state guarantee and the amount of revenue which the local districts are able to provide.

The *economic index* (which determines county ability) and the *criteria of quality*, are the two most important elements in the general state aid formula. They can be manipulated by legislative action along with lesser factors such as the fixed dollar multiplier and the PTR factor. As we shall see, the legislature, growing more and more dissatisfied with the formula, has become inclined to build a new vehicle rather than tinker further with the old.

In 1965, there was a 15.7% reduction in tangible property tax operating levies for schools and a \$35.5 million increase in total state spending for public schools, raising the state aid portion of the schools' operating budgets from 25.1% to 36.8%. But by 1966, property taxes for school operations were almost back to their original level, climbing 14.6%. State aid rose also, but only 8.5%. In 1967, property taxes rose 14.1%; in 1968, 16.7%; at the same time state aid was falling. The formula was proving inflexible.

The foundation plan had a feature which was supposed to keep spending for schools down to save taxpayers dollars. It was called the “104% budget control” provision: “No district shall budget or expend for operating expenses *per pupil* more than 104% of the amount legally budgeted for such expenses *per pupil* in the preceding school year.” The original law contained six grounds for budgetary appeals. By 1969-70, the

* State guarantee = $\text{COQ} \times 760$ (multiplier set by law) $\times$ PTR

grounds for appeal had increased to 16. Nearly 73% of the school districts appealed their 1969-70 budgets and won.

In 1969 the legislature passed a supplemental aid bill which provided for the distribution of \$26 million in a manner different from the foundation program. It was passed in 1969 as a one-shot relief of property tax burden and it passed again in 1970 on a continuing basis.

The \$26 million was to be distributed according to a guarantee per pupil and per employee, modified according to the wealth of a district (using an index of adjusted valuation per pupil). In 1969 the guarantee was \$70.40 per pupil and \$1,235.00 per certified employee.

In 1970 the legislature further attempted to halt the property tax and school budget spiral with a tax lid and a restriction on local district budget increases.

However, neither the foundation plan nor the supplementary state aid plan nor the tax and budget controls produced equality of educational opportunity or lessened the property tax burden.

While the costs of running schools have climbed, the state aid has fallen, and the property tax has borne the brunt. The failure of all the attempts to relieve the local property tax burden is evident in the following chart:

**School revenue breakdown in Kansas in
percentage of total revenue**

Sources	YEARS							
	64-65	65-66	66-67	67-68	68-69	69-70	70-71	71-72
Local *	55.3	35.6	40.0	43.6	47.3	45.2	45.3	46.2
County **	16.3	20.1	16.7	16.0	15.5	14.9	15.7	15.7
State †	23.7	35.3	34.5	32.2	30.1	34.2	33.0	29.9
Federal	4.7	9.0	8.8	8.1	7.1	5.7	6.0	8.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Total Revenue ‡ in millions	233.6	259.5	292.3	319.5	355.7	390.9	402.4	430.5

* Property taxes.

** Basically from the county foundation fund (also property tax).

† Bulk from the state school foundation fund. Since 1969, 6 to 6.5% of the state aid figure has been made up of the supplemental state school aid.

‡ These figures include small amounts for junior college aid.

PRESSURE FOR CHANGE

The pressure for major changes in the financing of Kansas public schools has been building for several years. Prior to the 1970 tax lid and supplemental aid plan considerable backstage work was being done by various state organizations and interest groups to develop alternative finance schemes.

The *Kansas NEA*, the state teachers' organization developed a funding scheme based upon local district *tax effort* rather than upon district *wealth*.

While the teachers were at work with their plan, the *Kansas Farm Bureau* was urging a shift of much of the property tax burden to a state income tax.

The *Kansas Association of School Boards* had difficulty agreeing upon a reform proposal because of the diverse nature of its constituency. Like the Farm Bureau, however, KASB's objective was to reduce the property tax burden and it proposed a state-local revenue sharing plan based on per-pupil operating costs.

The *State Board of Education*, though not a major force in shaping new education programs in the Kansas legislature, did develop a plan similar to the KASB proposal.

In addition to these formalized plans, other interest groups, particularly the utility and railroad interests, were making their presence known through lobbying. Also the labor unions pushed for their interests—reduction in residential property taxes and personal income taxes and increased business and professional taxes.

None of these plans considered the higher costs of educating special categories of children, nor did any address directly the problem of municipal overburden.

THE LEGISLATIVE RESPONSE

Out of all these proposals and pressures came two new school finance bills in 1971, written by the Joint Committee on School Finance, created in April of 1970 and chaired by Republican Senator Joseph Harder, a telephone company executive from Moundridge, Kansas, a combined rural, urban district.

In the earlier meetings of the committee the various proposals were studied and in the later meetings the two bills were forged through intricate compromise. Innumerable computer runs were employed to show the committee mem-

bers how all of the school districts fared under the various plans.

The majority report combined several proposals into a new scheme, whose main features were these:

- a) A per-pupil guarantee based on district enrollment categories with the per-pupil guarantee inversely related to district size.
- b) a 1.5% tax on district taxable income;
- c) an economic index based upon district taxable wealth and taxable income per pupil;
- d) a tax rate factor which penalized districts taxing under the median adjusted rate for the state twenty-one mills in 1969);
- e) a grandfather clause based on a 100% guarantee for the first year that the formula would not reduce revenue), then 90% for the second year, etc.—until 1975 when the clause expires;
- f) no change in transportation allowances;
- g) no change in the county school foundation funds; and
- h) the same budget restrictions as in the amended foundation plan, except the budget increases would be limited to 5% per pupil rather than 4% and new, more limited, appeal provisions would apply.

This proposal failed to get out of committee in the 1971 legislature. The governor stood adamant against any new taxes until the tax system was reformed. This meant his influence was mostly negative throughout. His popularity, notably improved by his previous hardnosed tax stands, scared other legislators from taking pro-tax stances.

In the spring of 1971, a new Special Committee on School Finance was created under Senator Harder. Needless to say, there was less than overwhelming enthusiasm for the task of coming up with another set of proposals.

Then came *Serrano* which changed the committee's attitude toward the potential scope of the school finance problem. The

committee felt that the plans which had been considered would not meet the test of removing district wealth from the finance equation.

Senate Bill 716

At this point the committee reviewed and reformulated its proposal so that it would be based not on local district wealth, but on district tax effort. In doing this, the committee did not completely discard its previous work. They retained and updated the concept of a state guarantee per pupil based on district enrollment.

In addition, the committee adopted a district power-equalizing scheme, whereby there would be a direct correlation between local tax effort and per-pupil expenditure.

This proposal, SB 716, established a prescribed tax rate of 1.75% of the combined adjusted property valuation and the taxable income of a district. Under SB 716, a school district taxing itself above the 1.75 rate would be rewarded with more funds from the state; a district with a lower rate would receive less. A formula was developed by the committee which designated the amount of funds guaranteed for differing rates of local taxation.

Under this proposal, the state would be "fiscally neutral." The local school boards would determine the local tax rates, which would, in turn, dictate the state contribution. A district could choose to make its local effort through

- a) a property tax;
- b) a district income tax; or
- c) a combination of the two.

But here is the political rub. If the local taxing effort in a given district were to produce more revenue than necessary to finance its school education budget, the excess amount would be remitted to the state for distribution among districts entitled to state education aid.

Senate Bill 716 had three other significant features:

First, the state would assume 100% of the transportation costs; second, the ten-mill county school foundation fund levy

would become a state property tax to help finance the increased state aid; third, the tax lid on school districts would be dropped and budget controls imposed (however, instead of placing the same tax increase limitation on all districts, as had been the case under the old system, poor districts would be given preferential treatment; that is, they would be allowed to increase expenditures faster—by as much as 20%—than high-budget districts—limited to 5%).

Under SB 716, the maximum budget of all districts in 1972-73 would have been \$391.6 million compared with \$364.8 million in 1971-72 under existing budgetary controls. However, general state aid was planned to increase from \$102.4 million to \$122.4 in 1972-73. Local sources would provide \$171.7 million. State transportation aid would go up from \$6 million to \$11 million.

This increase under SB 716 would have been met by the ten-mill state property tax, producing \$64 million. This would leave some \$52 million to be raised by new state taxes.*

Most districts would have benefited under the bill, which is not hard to imagine with over \$50 million in new money. In some cases the improvement was spectacular. For example, the Turner district had an adjusted property tax rate of fifty-nine mills. It could have cut this more than half to twenty-seven mills and still have had an increase in budget per pupil from \$653 in 1971-72 to \$711 in 1972-73. The property tax could have been reduced even more if the district imposed a local income tax as authorized by SB 716.

THE FUTURE—CHANGE ALMOST CERTAIN

Meanwhile a *Serrano*-like case, *Caldwell v. Kansas*, has been filed in a state district court in Kansas with Robert F. Bennett, a Republican State Senator and member of the Joint Committee on School Finance, involved as an attorney in the case.

The following tables, used in the case, illustrate how, in 1970, the *Serrano* situation very much existed in Kansas:

* (It was assumed that \$6.5 million in PL 874 funds for federally impacted areas could be taken into account in determining state aid.)

TABLE 9 — TABLE 10
SAMPLE TAX RATES AND REVENUES PER PUPIL FOR LOW AVPP • DISTRICTS—1970

School District	Enrollment 9/15/70	1970 AVPP	Amount Per Pupil			
			1970 Adj. Gen. Tax Rate (Mills)	Dist. Gen. Fund Tax	Gen. & Supp. State Aid	Other Dist. Gen. Fund Revenue
Galena	971	\$ 4,627	34.46	\$ 159	\$ 250	\$ 106
Turner	5,305	4,852	53.22	258	228	105
Elwood	305	5,348	42.16	225	345	137
Mulvane	1,551	5,705	34.35	196	235	163
Rose Hill	677	5,856	27.58	161	231	164
Leavenworth	5,419	5,924	31.22	185	262	118
Maize	912	6,119	39.44	241	229	115
DeSoto	1,797.5	7,746	41.23	320	187	156
						\$ 515
						\$ 591
						707
						594
						556
						565
						585
						663

SAMPLE TAX RATES AND REVENUES PER PUPIL FOR HIGH AVPP • DISTRICTS—1970

Satanta	518	\$ 52,752	7.45	\$ 393	\$ 138	\$ 499	\$1,030
Lakin	607	53,094	7.04	374	145	522	1,041
Lorraine	663	53,882	15.13	815	170	396	1,381
Hugoton	925	55,394	5.66	314	72	575	961
Macksville	387	56,294	12.80	721	157	512	1,390
Edson	77	56,626	17.46	989	23	560	1,572
Kendall	93	79,672	13.38	1,066	19	737	1,822
Rolla	201	93,701	7.83	734	41	697	1,472
Mullinville	151	95,982	14.36	1,378	55	796	2,229
Moscow	140	115,615	6.59	762	50	1,146	1,958

• Assessed Valuation Per Pupil.

Note that despite high millage levies, poor districts (Table 9) do not get much of the total revenue pie. Whereas, wealthier districts, although they receive less from the state, are able, at low tax rates, to spend substantially higher sums per pupil (Table 10). This is the typical *Serrano* picture. If a child's parents and neighbors are poor, the chances are good in Kansas that less was spent for his education than for children in wealthier neighborhoods.

Even if the Kansas case fails and *Rodriguez* is not upheld by the Supreme Court, Kansas will change its system of educational finance. The pressures for change are simply too great.

TABLE 11
KANSAS

District (type)*	Need	Capacity		Effort	
	Title I per pupil (1968-69)	Property Value per pupil (1970)	Adjusted Gross Income per pupil (1966-67)	School Tax Burden (%) (1968-69)	School Tax Rate (mills) (1970)
Kansas City (1)	18.56	8,319	9,787	3.20	39.7
Wichita (1)	14.90	8,128	10,747	3.57	51.3
Bonner Springs (2)	34.01	7,885	8,830	4.93	54.6
Seaman (2)	8.83	11,566	7,551	4.32	27.8
Stanley (3)	6.56	23,676	6,123	8.36	19.5
Shawnee (3)	.29	9,522	15,861	3.26	53.1
Coffeyville (4)	21.20	6,701	11,706	2.29	41.9
Kingman (5)	21.65	23,031	6,967	7.21	23.8
Mean	15.75	12,478	9,696	4.64	38.9
Maximum/Minimum Ratio	117.2/1	3.5/1	2.6/1	3.6/1	2.8/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

TABLE 12
KANSAS

District (type)•	Revenue/Pupil			Expenditures/Pupil	
	Local (1968-69)	State (1968-69)	Federal (1968-69)	Total (1968-69)	Instructional (1968-69)
Kansas City (1)	313	182	38	733	368
Wichita (1)	384	243	56	872	461
Bonner Springs (2)	436	248	53	1,175	478
Seaman (2)	326	243	26	1,806	451
Stanley (3)	512	231	25	4,656	445
Shawnee (3)	517	198	23	1,167	488
Coffeyville (4)	268	268	25	776	378
Kingman (5)	502	338	39	1,094	443
Mean	407	244	36	1,534	439
Maximum/Minimum	1.9/1	1.9/1	2.4/1	6.4/1	1.3/1

• (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

TABLE 13
KANSAS

District (type)*	Latest Aid/Pupil (1968-69)	Alternative A ** Aid/Pupil (1971-72)
Kansas City (1)	\$182	\$428
Wichita (1)	243	195
Bonner Springs (2)	248	576
Seaman (2)	243	474
Stanley (3)	231	N.A.
Shawnee (3)	198	421
Coffeyville (4)	268	418
Kingman (5)	338	259
Mean	246	396
Maximum/Minimum	1.9/1	2.9/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

A "Central City" district is defined as having a total population greater than 250,000. "Fast Growth Suburbs" are located close to Central Cities and have population growth rates higher than the suburban median. "Slow Growth Suburbs" are also located near Central Cities and indicate a population growth between 1960 and 1970 below the median of all suburban districts in the sample. Slow Growth Suburbs include wealthy residential communities and suburbs with substantial concentrations of commerce or industry. "Independent City" districts are those which have populations between 10,000 and 250,000 and are located beyond built-up Central City areas. Finally, "Rural" districts are those which contain no communities with populations as large as 10,000.

Note: A word about the sources of data is in order. In the short period of time in which this data was collected, it was necessary to compile pertinent school finance data from a variety of sources. All the data on Table 12 as well as the Title I revenue per pupil data on Table 11 was derived from the U. S. Office of Education Report, *Statistics of Local Public Systems: Finances, 1968-1969*. Adjusted Gross Income Per Pupil was derived from the National Educational Finance Project work, *Personal Income by School District, 1966-1967*. Property Value Per Pupil data on Table 11 was collected from the various published and unpublished reports of the state departments of education in the various states, and data on school tax rates and school tax burdens was derived by dividing local tax revenues obtained from USOE data into Adjusted Gross Income and Property Value in the respective school districts. Data in Table 13 was supplied by Robert Norris, the principal investigator in the Kansas case study.

In all, data on more than 25 school finance variables was collected in a total sample of 18 districts in Kansas. A more comprehensive analysis of this data is currently being prepared and will be included in an appendix which will subsequently be published as a separate volume.

•• Alternative A: District Power Equalizing Scheme proposed in S.B. 716.

NEW YORK

by Mary Lestz

The current New York state school finance system is inadequate and unpopular. Costs continue to rise and residents are questioning whether they are getting the kind of education they want for their money. Increasing numbers of people are demanding tax relief. In 1969-70 alone, 137 school budgets were rejected by the voters. City dwellers feel that their special educational needs are neglected. Suburbanites suffer from high school taxes. Some children have a great deal more money spent on them than others.

The New York state legislature, traditionally one of the most responsive to educational needs in the country, has chosen to study carefully the problems before acting on them.

THE NEW YORK SCHOOL FINANCE STUDY COMMISSION

While education was once politically in the executive domain in New York, the state legislature has taken an increasing responsibility for state educational policy in the past five years. It has been faced with a need for complex and massive reform in all aspects of education—financing, school desegregation, aid to parochial schools. Further, it is faced with a need for accountability. It must convince taxpayers that their increasing contribution to education is buying increased educational quality. Confronted with these problems, the legislature has accepted the need for a larger and broader state role in school financing.

Because the issues facing it are both complex and controversial, the state legislature asked that a commission be appointed to study all aspects of elementary and secondary education in New York. It called for a commission report because a thorough study required greater time and resources than the legislators had. Further, it was not considered politically wise for far-reaching and radical proposals to come from a legislative committee.

In answer to their request, the Governor and the Board of Regents of New York in 1969 created a *New York Commission on the Quality, Cost and Financing of Elementary and Second-*

ary Education. Manly Fleischmann, a lawyer with a record of extensive public service, was named chairman. Although the approaching "fiscal crisis" in New York state undoubtedly provided the essential political motivation for creating the Fleischmann Commission, the Commission's mandate included the "quality of education". It was hoped that school finance reforms proposed by a prestigious and impartial commission would fare better in the legislative process than those fashioned by special interests.

The Commission, which has cost \$1.5 million so far, has published the first part of its report dealing with school finance, federal aid to education, racial and ethnic integration, and aid to non-public schools. To write this report, it engaged in a far-reaching program to gather information and held many meetings with individuals and groups, including executive sessions with education experts, on a wide variety of education-related topics. Between October, 1970, and April, 1971, more than 600 speakers appeared at thirteen public hearings of the Commission. The Commission contracted with some fifty independent research organizations and individuals for reports in all major areas of the study. It is generally considered that, although the Commission writers had to keep within a framework of what was politically feasible, they wrote their report free of political pressures.

The final report details virtually all aspects of education in New York and makes specific recommendations. While the Commission split on some issues, issuing a majority and a minority report, it was united in its recommendations for school finance reform. The chapter on school finance will be reviewed extensively here.¹

Some of the questions the Commission addressed in the school finance area were:

1. How can we relieve the property tax burden? How can we administer fair taxes?
2. How can we improve the *quality* of NY education?
3. How can we improve the *equality* of NY education?

¹ All facts, figures and graphs hereafter in the body of the report are from "Report of the New York State Commission on the Quality, Cost and Financing of Elementary & Secondary Education." Vol. 1, 1972.

THE NEW YORK SYSTEM FOR FUNDING SCHOOLS: IN THEORY IT EQUALIZES

The present system of school funding in New York is a mixture of local revenue (48%) and state revenue (48%) with some few federal funds (4%). The local tax is the base revenue for any given school district, with state aid determined for the most part in response to the amount raised locally.

The local tax is raised almost exclusively from property taxes within the local school district. The rates of taxation are determined locally—with a state established minimum of \$11 per \$1000 of property. Thus the amount raised and spent in a school district clearly varies according to:

- (1) the wealth of the school district; and
- (2) the fiscal commitment of the district to education.

State aid is raised from various state-wide taxes, such as the income tax and sales taxes. The theory of the state aid is that it will close the gap between the rich and the poor districts. In New York 93% of the state aid is "general aid" which breaks down into:

- what is in effect a flat grant of \$310 per student, regardless of the district's wealth
- funds distributed according to an equalization formula
- funds distributed according to certain particular factors in a school district, such as district size, transportation problems, etc.

Seven per cent of the state aid is "categorical aid"—aid for textbooks, vocational aid, orphan, school lunch, educational TV, pre-kindergarten, and urban aid.

The basic equalization grant (called the percentage equalizing grant or PEG) is the key to the state's attempt to equalize poor and rich districts. The ingredients of the formula are district valuation per student and state average valuation per student.² The PEG in its complete implementation would

² The formula now in use in New York state is:

$$A_1 = [1 - (0.51 \cdot \frac{\text{district valuation per student}}{\text{state average valuation per student}})] \cdot E$$

where E = approved operating expenses, subject to an upper limit of \$860 per student and subject further to a minimum grant of \$310 per student.

assure that any two districts which levy the same local tax rate for schools have precisely the same dollars per student to spend, regardless of their wealth.

IN PRACTICE IT DOESN'T

In fact, the PEG is never fully implemented. The flaw in the formula is basically that differences in assessed valuation per student run as high as 10 to 1, so that a ceiling must be placed on educational expenditure per student that the state will finance. This ceiling is the real catch to the PEG's, for most school districts can raise well over the ceiling (\$860 per pupil in 1971-72) with their local taxes. In fact, this is the case in New York State. The Commission concludes:

The result of this . . . is to make the percentage equalization grant into a foundation program for all practical purposes, especially when most districts actually do spend beyond the point at which the state stops its contribution, which is the case in New York. In effect, the \$860 upper limit of sharing in New York State is the cost of the foundation program per student."

Since most districts spend over \$1000 per student, there is little equalizing value in an \$860 guaranteed foundation. (See Table 14)

TABLE 14
HIGH AND LOW INCOME COUNTIES AND THEIR EDUCATIONAL EXPENDITURES

	Highest and Lowest Counties by 1969 Personal Income Per Capita		Expenditures in Public Elementary and Secondary Schools for Regular Day Instructional Services Per Student in Weighted Average Daily Attendance 1968-69	
	Dollars	As % of State Aver. Income, By Counties	Dollars	As % of State Aver. Exp., By Counties
<i>High Counties</i>				
Westchester	6759	197	857	131
Nassau	5893	171	813	125
New York City	4738	138	748	115
Monroe	4597	134	702	108
Albany	4380	127	649	99
Dutchess	4015	117	674	103
Schenectady	3881	113	740	113
Erie	3800	111	621	95
<i>State Average</i>	3438	100	653	100
<i>Low Counties</i>				
Allegany	2897	84	631	97
Lewis	2779	81	632	97
Schuyler	2754	80	553	85
Clinton	2752	80	604	92
Oswego	2675	78	563	86
Saratoga	2653	77	610	93
Franklin	2543	74	600	92
Schoharie	2447	72	586	90

Source: State Education Department, *Annual Education Summary 1969*, Albany, The Department, 1971, pp. 142-145;
Office of Statistical Coordination, New York State Division of The Budget, *New York State Statistical Year-*
book, Albany, State Capitol, 1971, p. 96.

The primary problem in the present system of local and state funding is that the PEG's are insufficient. With graphical and statistical evidence (see Table 14), the Fleischmann Commission concludes that "the relation between district expenditures and wealth is clear; hence, the equalizing grants employed so far by the state fail to remove that invidious relationship". The goal of equality in the amount of money a school district receives per student is not achieved.³

Second, the property tax basis for local school revenue is regressive: Poor areas pay a higher tax rate to raise the same amount as their rich neighbors. The combined effect of an inadequate equalization plan and a regressive tax is that residents of poorer districts pay higher rates and raise fewer school dollars than residents of richer districts. (See Tables 16 and 17)

Third, the present system is a handicap to successful planning since a school cannot predict its revenue. Voters can always decline a budget, and, since the state provides only half the budget, it does not feel any compunction to provide stable, consistent funding. The Commission concludes: "The present mechanism for acquiring resources to support school services renders planning of education nearly impossible."

Fourth, the present system fails in practice to deal effectively with the needs of New York's urban areas, where costs and services are more expensive than elsewhere.

Fifth, the system creates an unnecessary barrier to social class integration. The wealthy want to stay together and not let poor people with children into the neighborhood, since poor families reduce the community's tax base while increasing the revenue needed.

In sum, the present financial system in New York State is

³ The Fleischmann Commission compares two school districts in New York to illustrate the problems. They are Levittown and Great Neck. Both tax their property at \$2.72 per \$100. Since the assessed property value in Levittown is \$16,200 per pupil and that in Great Neck is \$30,500 per pupil, obviously Great Neck raises considerably more money at this rate. Great Neck gets the minimum in state aid—\$310 per pupil; Levittown gets the maximum—at that time \$764.48 per pupil. After payment of state aid designed to equalize expenditures per pupil, the Great Neck student has about 80% more money spent on his education than does the Levittown student.

inefficient, unequal, and quite possibly unconstitutional.⁴ Thus one of the tasks of the Fleischmann Commission has been to propose an alternative system.

THE FLEISCHMANN COMMISSION'S RESPONSE: FULL STATE FUNDING

The Commission recommends full state funding. It calls for all school revenues to be raised by any form of statewide taxation—real property tax, income tax, sales tax, or any combination thereof, provided that it is fairly administered throughout the state. The Commission adds that taxes must be raised largely from those who have the wealth. The money should be distributed as needed; that is, children who will cost more to educate—underprivileged, handicapped, or otherwise disadvantaged children—should have more money spent on them. Poor schools should be “leveled up” to the standards of rich ones. The levelling-up cost should be spread over several years. Finally, in one of the most controversial proposals of its report, the Commission recommends that all local option for supplementary school levies be terminated—a step necessary to preserve equality.

Full State Funding: How It Will Work

The proposed distribution formula is based on two central considerations: *first, that full state funding must remove the disparities in educational spending that are unrelated to the requirements of students or to geographic differences in costs of educational services—basically, wealth-related disparities; second, that funds must be allocated according to the educational needs of students.*

Eliminating wealth-related disparities: To implement the first consideration, the Commission proposes that expenditures

⁴ The current New York system was challenged unsuccessfully in a post-Serrano law suit. The judge dismissed the complaint (*Spano v. Board of Education*, 328 N.Y.S. 2d 229, Jan. 16, 1972) saying that the U.S. Supreme Court had already foreclosed the issue with its 1969 decision in *McInnis v. Ogilvie* (the Illinois school finance case). However, the U.S. Supreme Court has decided to hear a Serrano-type claim (*San Antonio Independent School District v. Rodriguez*, probable jurisdiction noted June 7, 1972), so apparently the *McInnis* decision may not have justified the New York Court's dismissal. To test this, at least one suit is now being prepared to challenge in Federal Court the constitutionality of the present system in New York.

of all districts be raised to the level of the district spending at the 65th percentile in a ranking of districts according to their base expenditures. (In 1969-70 the base expenditure of the district at the 65th percentile was \$1,037 per student; in 1970-71 it was \$1,144 per student.)

Some of the mechanics of state aid distribution are outlined by the Commission. First, in order to allocate money per student, it is necessary to define how students will be counted. In the past, a weighted average has been used, assuming that older children should count for more. The Commission concludes, however, that a straight count of enrollment should be used, using no weighting factor except 0.5 for kindergarten, on the assumption that kindergarten will continue to be a half-day program. This is a count of total enrollment, not just daily attendance. There is no reason to discriminate, as in the past, against schools which have more truants.

Second, a save-harmless clause would protect those school districts with funding over the 65th percentile. The state would provide funds to maintain the level at which they were spending in the base year until the rest of the state catches up with them. Under this system, the rich schools would not lose any money; they simply would be held back from funding increases while the rest of the state caught up, at which point they would grow at the same rate as the other schools.

On the other hand, those districts funding below the 65th percentile would have their expenditures increase over a period of time in increments of 15% of the base expenditure per year (\$156 with a base of \$1,073). This would limit strain on the state budget and facilitate planning. By the fourth year of the plan, all districts should be leveled up to the 65th percentile.

Funding according to need: The second major consideration in distribution, which would modify the first, is that funds should flow according to need. To this end, the Commission recommends that students, who score poorly in reading and mathematics tests, should be weighted at 1.5—in other words, they should be funded as though they were one-and-a-half students.⁵ It is further proposed that the amount made avail-

⁵ The tests used for this determination would be those currently being administered in the state Pupil Evaluation Program (PEP) in the third grade. It is recommended, however, that earlier testing is preferable, and if acceptable tests for 5 and 6 years olds can be found, they should be used.

able for such students be stabilized at 15% of the state's base expenditure level, multiplied by the number of students enrolled. This would lend stability to the state budget even if there were erratic changes in test scores, and would enable the schools to plan ahead. The effect of these proposals would be that school districts with underachieving students would receive extra money to cover the additional costs of educating those students.

In the belief that money is more effectively spent at the elementary level, the Commission also recommends that money go to the elementary schools in greater percentage than to the secondary schools (70% elementary, 30% secondary).

While disparity in costs is taken into account in the Fleischmann proposals, it is only disparity in the costs of educating disadvantaged children. Students' performance and needs are weighted and included in distribution formulas, but no consideration is made for municipal overburden, or regional differences in instructional and other costs.⁶

PAYING FOR FULL STATE FUNDING

While acknowledging the shortcomings of the property tax (especially its regressive nature), the Commission does not recommend its abolition. Rather, it proposes alleviating somewhat its regressive impact. It recommends that a uniform-rate, statewide tax on the full value of property be levied and earmarked for education. This rate would be set initially at a level sufficient to produce an amount approximately equivalent to current total local educational revenues. A tax rate of \$2.04 per \$100 full value of property would raise the same amount of revenue as the current system does. The report further recommends that the tax rate be frozen at a point equal to or slightly below the rate prevailing at the time the plan goes into effect. If the state rate is frozen at the level of the base year, every district, whether above or below the state average tax rate, should experience a decrease in property taxes relative to what would have been the case had the freeze not been imposed.

⁶ Another chapter of the Commission report, not yet released, proposes that the state take over all transportation and construction costs.

Another proposal suggests that the tax rate should be reduced on the residential share of the property levy, since residential taxes are the most regressive, and that the money to replace this loss be obtained from federal funds or from the state income tax, a progressive tax.

It is recommended that, in order to tax more fairly, increased attention be focused on *assessment practices* and on *tax credits* for low-income households that are excessively burdened with school taxes. For those properties too complex to be assessed locally, such as utilities and certain industrial properties, the Commission recommends assessment by the state.

For families paying more than 10% of state taxable income in school property taxes, the Commission recommends that they be allowed to credit the excess against their state income tax bill. If they pay less income tax or none, they would be re-imbursed.

In a similar vein, if more than 20% of apartment dwellers' rents are paid as property tax, they would be credited the excess against their state income tax bill. If they pay less income tax or none, they would be re-imbursed.

The Pros & Cons of Full State Funding

The Commission recognizes that there will be a great debate about full-state funding, and they have anticipated this discussion with a brief analysis of some arguments opposing such a plan. Two of the chief arguments and answers are:

1. *State funding would mean loss of local control.* The Commission insists that it is quite possible to have financing on one level and policymaking and other kinds of control at another. An example of this assertion is the school finance situation in Britain where funds come from the Central Ministry of Education, yet the schools are "fiercely independent" and operate individual programs. The Commission maintains that state finance and local control are compatible and that the burden of proof lies with those who say that local control cannot exist alongside state financing.
2. *State funding would block innovation.* Some people are afraid that state funding would eliminate so-called "lighthouse districts," areas whose great wealth enables them to operate experimental and innovative programs which even-

tually benefit all schools. The response is that the state can set up such programs, too, and in districts where experiment may be more needed—in schools of underprivileged or “problem” children.

The Commission also recognizes the special problems of the cities and sets forth some reasons why they would benefit from the Commission’s proposals:

1. The tax freeze would benefit cities whose tax rates are bound to increase rapidly.
2. New York’s state constitution limits the taxing powers of the state’s six largest cities. The cities must fulfill their needs from the limited (and often inadequate) revenue that they are legally allowed to raise. If education in the cities were taken care of by a state tax, larger sums of city money would be freed for local non-school needs.
3. Cities, with disproportionate numbers of poor and “educationally disadvantaged,” would benefit from the tax credits and the weighting for underachieving students.
4. The shift from counting pupils by attendance to counting straight enrollment would benefit cities which have a traditionally high truancy rate. For example, in 1969-70 New York City, with 32.87% of the state’s total enrollment, had only 30.97% of WADA (weighted average daily attendance).

FULL STATE FUNDING: WHO WINS, WHO LOSES— AND HOW MUCH WILL IT COST?

The additional cost for funding the Fleischmann Commission proposals would be about \$715 million in 1972-73, broken down as follows:

levelling up to the 65th percentile	\$125 million
1.5 weighting for educationally disadvantaged	\$465 million
tax credits for overburdened homeowners and renters	\$125 million

Table 15 illustrates how the new proposals would change the financial picture in New York state. Since the ceiling on

TABLE 15
EFFECT OF LEVELING UP TO THE 65TH PERCENTILE OF EXPENDITURES WITH
SAVE-HARMLESS PROVISION AND PEP SCORES WEIGHTED AT .5,
ON SELECTED SCHOOL DISTRICTS IN NEW YORK STATE
 (Base Year: 1969-1970)

Name of District	Enrollment (K = 1/2)	Base Expend.	Base Expend. & Urban Aid	True Val/Stud ENR	Effect in First Year of Leveling Up to 65th Percentile	Effect with PEP Wght'd at .5 - Percentile	Gain at 65th Per- centile w/PEP Weighted
CITY							
New York City	1,068,502	1,016	1,045	45,859	1,037	1,273	228
Albany	10,702	998	1,019	57,498	1,037	1,182	163
Buffalo	68,090	869	903	28,368	1,024	1,219	316
Rochester	44,290	1,070	1,097	40,799	1,070	1,260	163
Syracuse	28,668	946	967	34,737	1,037	1,159	192
Yonkers	29,005	947	976	46,781	1,037	1,169	193
ENLARGED CITY							
Dunkirk (Chatauqua)	3,258	982	982	53,038	1,037	1,133	151
Lockport (Niagara)	6,720	899	899	25,081	1,037	1,125	226
Geneva (Ontario)	3,282	1,036	1,036	29,044	1,037	1,128	92
Hornell (Steuben)	3,439	956	956	14,010	1,037	1,125	169
Elmira (Chemung)	13,358	957	964	20,359	1,037	1,105	141
Rome (Oneida)	11,646	895	902	16,877	1,037	1,097	195
Schenectady (Schenectady)	12,239	1,164	1,187	25,535	1,164	1,299	112
Ithaca (Tompkins)	7,871	1,095	1,095	31,902	1,095	1,180	85
Oswego (Oswego)	5,166	1,024	1,024	47,788	1,037	1,138	114

Beacon (Dutchess)	3,532	972	972	27,883	1,037	1,136	164
Hudson (Columbia)	3,461	934	934	23,416	1,037	1,162	228
Newburg (Orange)	12,230	1,047	1,061	23,118	1,047	1,138	77
Ogdensburg (St. Lawrence)	3,235	815	815	13,641	971	1,020	205
SUBURBAN							
Bronxville (Westchester)	1,350	1,911	1,911	68,718	1,911	1,911 *	0
Great Neck (Nassau)	9,427	2,079	2,079	71,413	2,079	2,131	52
Hempstead (Nassau)	5,371	1,430	1,453	64,752	1,430	1,599	146
Mamaroneck (Westchester)	6,106	1,527	1,527	49,410	1,527	1,610	83
Levittown (Nassau)	16,312	1,163	1,163	17,995	1,163	1,231	68
Peekskill (Westchester)	3,412	1,041	1,041	23,732	1,041	1,140	99
West Islip (Suffolk)	8,961	1,037	1,037	17,397	1,037	1,113	76
Mt. Vernon (Westchester)	11,377	1,123	1,149	35,977	1,123	1,266	117
RURAL							
Indian Lake (Hamilton)	363	961	961	48,152	1,037	1,073	112
Red Jacket (Ontario)	1,337	833	833	14,854	989	1,074	241
Edwards (St. Lawrence)	407	999	999	11,851	1,037	1,130	131
Penn Yan (Yates)	3,141	888	888	30,211	1,037	1,086	198
Town of Webb (Herkimer)	483	1,505	1,505	78,633	1,505	1,570	65
Carthage (Jefferson)	3,437	926	926	14,109	1,037	1,107	181
Malone (Franklin)	3,562	867	867	14,617	1,023	1,116	249
Minerva (Essex)	238	1,266	1,266	33,951	1,266	1,302	36
Keene (Essex)	171	1,459	1,459	42,709	1,459	1,615	156

Source: Computations based on data provided by the New York State Education Department, September 1971.

* AFDC, PEP Not Available.

increase in funds is 15% of the base expenditure, the most a school district could gain in expenditure per student is \$156 per year; thus a few schools in the table are still below the \$1,037 level. It is anticipated, however, that within three years levelling up to the 65th percentile could be completed. After the levelling up to the 65th percentile is achieved, it would be a matter of time and inflation until levelling up to the 100th percentile (which remains constant) would be reached.

How many school districts would benefit from the proposals? There are 709 school districts in New York state. If the Fleischmann Commission proposals had been enacted in 1969-70 there would have been:

442 districts (including 64% of students in NY) with more money and higher taxes

265 districts (35.9%) with more money and lower taxes

1 district would have less money and lower taxes

1 district (the only real loser in the whole plan) would have less money and higher taxes.

Had the Fleischmann Commission proposals been adopted in 1969, 67% of New York's students would have received more money. Were they enacted today, 36% would gain.

In urging that its plan be accepted, the Commission notes:

- (1) After extensive research, this is the best possible plan for New York.
- (2) Some form of federal revenue sharing seems inevitable, thus a relief from the education costs.
- (3) "If *Serrano* becomes the law of the land, New York may be forced to adopt such a plan under judicial mandate. We prefer to adopt the essentials of the plan now, when careful consideration can be given to all its details."

THE COMMISSION RECOMMENDATIONS:

WHAT HAPPENS NOW?

How has the Fleischmann Commission been received? The legislators seem to have adopted a "wait and see" attitude, but several themes can be discerned, outlining the debate to come.

Tax relief is welcome. Those whose concern is high taxes are encouraged by the prospect of property tax relief. Those who live in the cities would benefit from the weighting formula for the many educationally disadvantaged children in their schools, and from the freeze in property taxes. Those who live in fast-growth suburbs would benefit from reduced taxes, since most of them now tax themselves for schools at a level above the proposed state-wide rate. (See Table 16)

The opposition to the Fleischmann Commission forms around several issues:

- loss of local control
- expense of the proposal
- fear of giant bureaucracy
- failure of the report to deal with implementation of proposals.

The local control issue has several components: level of expenditures, salary of teachers, number of teachers, boundaries of a school district (who is included, who is left out), and level of capital expenditures.⁷ Concern about losing local control centers around these matters.

Local control can become a dangerous issue. In other states the banner of "local control" has been raised by coalitions opposing reforms for varied and sometimes conflicting reasons. In this case the real issue is obscured, and progress becomes difficult. Perhaps if proposals were enacted in separate steps, this confusion of the issues could be prevented.

⁷ Subsequent chapters of the Commission report will propose full state funding of capital expenditures, and state determination of district boundaries.

The concern over the expense of the proposals is a very real one, stemming from the fact that many residents of New York feel they are already taxed as much as they can bear.

In the face of heavy tax burdens, taxpayers want to be reassured that their higher tax payments spent for schools will in fact produce better education. The Commission avoided this question with the attitude that, while high expenditures do not guarantee high quality, they certainly help. However, the relationship between dollars and quality education must be examined further.

Some will oppose the Commission out of self-interest. Rural districts, faced with higher taxes than before and afraid of losing local control, may oppose the Commission proposals. Industry and commerce may oppose the new tax structure which could increase their property assessments.

One obvious and crucial question is: Where will the necessary additional revenue come from? The consensus is that only with federal funds can New York afford the Fleischmann Commission reforms. One possibility, mentioned by Governor Rockefeller, is that, if the federal government were to take over the cost of welfare (\$1.2 billion dollars in New York state), the state welfare money could be converted to education.

Another question is, will the rich districts accept a freeze on their expenditures? Certainly not without a fight in the legislature.

FROM PROPOSAL TO STATUTE

Because the Fleischmann Commission said so little about the implementation of its proposals, a great deal of further thought and research will be needed before a bill (or bills) can be written. The task of implementing the Fleischmann Commission proposals is almost overwhelming in its complexity and difficulty. A legislative staff expert estimated that it would be at least a year before legislation is drafted. Each proposal will have to be dissected and debated. Computer print-outs are needed to show the effects of the reforms on each district. Political compromises will have to be made. No doubt provisions will have to be added to please powerful legislators. The work load is enormous.

As the proposals are being studied by the experts, the legislators are waiting—waiting to see what the Supreme Court does, waiting to see if more federal aid to education is forthcoming.

It would be premature to make any judgments about what will happen to the school finance situation in the New York State legislature. Many questions remain to be answered before the effect of the Fleischmann study can be known.

Will the debate turn into an urban vs. rural contest? Or the advocates of property tax vs. the advocates of more income tax? Or local control vs. state control enthusiasts? What will be the issues? None of these questions can be answered until the legislation is written.

Once the problems have been solved and a bill is before the legislature, the legislators will have to consider the needs of their constituents, the dictates of the U.S. Constitution, and their own beliefs about the best educational system for all the children of New York. The decision will be theirs.

TABLE 16
NEW YORK

District (type) *	Need	Capacity		Effort	
	Title I per pupil (1968-69)	Property Value per pupil (1969-70)	Adjusted Gross Income per pupil (1966-67)	School Tax Burden (%) (1968-69)	School Tax Rate (mills) (1969-70)
New York City (1)	39.33	50,767	21,397	3.24	16.29
Buffalo (1)	69.79	27,305	15,422	2.24	10.58
Rochester (1)	54.18	39,062	18,788	3.40	14.86
Farmingdale (2)	7.35	26,612	9,695	6.91	31.16
Copiague (2)	18.11	20,865	4,884	8.53	24.01
Greece (2)	6.52	32,138	8,594	7.03	17.89
Hempstead (3)	54.27	61,510	17,082	6.10	20.60
Hicksville (3)	9.17	10,508	33,502	7.13	28.41
New Rochelle (3)	23.25	47,852	23,322	4.11	23.46
Watertown (4)	28.06	20,197	12,618	2.41	16.19
Mayfield (5)	11.48	15,653	3,512	4.32	11.88
Fredonia (5)	8.14	23,563	10,490	3.14	18.38
Mean	27.47	31,336	14,984	4.88	19.48
Maximum/Minimum Ratio	10.7/1	4.3/1	6.8/1	3.8/1	2.9/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

TABLE 17
NEW YORK

District (type)*	Revenue/Pupil		Expenditures/Pupil		
	Local (1968-69)	State (1968-69)	Federal (1968-69)	Total (1968-69)	Instructional (1968-69)
New York City (1)	692	495	55	1,340	671
Buffalo (1)	346	609	103	1,172	579
Rochester (1)	639	403	145	1,301	661
Farmingdale (2)	670	647	22	1,732	780
Copiague (2)	417	731	26	1,272	666
Greece (2)	604	574	9	1,746	630
Hempstead (3)	1,041	369	80	1,731	854
Hicksville (3)	749	585	23	1,457	840
New Rochelle (3)	978	399	33	2,329	732
Watertown (4)	304	781	50	1,193	609
Mayfield (5)	152	781	20	1,004	526
Fredonia (5)	330	582	15	1,328	554
Mean	577	580	48	1,467	675
Maximum/Minimum	3.4/1	2.1/1	16.1/1	2.3/1	1.6/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

TABLE 18
NEW YORK

District (type)*	Latest Expenditure/Pupil (1970-71)	Alternative A ** Expenditure/Pupil (1970-71)	Alternative B *** Expenditure/Pupil (1970-71)
New York City (1)	\$1,167	\$1,167	\$1,415
Buffalo (1)	914	1,085	1,322
Rochester (1)	1,134	1,144	1,377
Farmingdale (2)	1,426	1,426	1,503
Copiague (2)	1,170	1,170	1,258
Greece (2)	1,140	1,144	1,220
Hempstead (3)	1,650	1,650	1,832
Hicksville (3)	1,646	1,646	1,726
New Rochelle (3)	1,630	1,630	1,761
Watertown (4)	1,183	1,183	1,283
Mayfield (5)	902	1,073	1,130
Fredonia (5)	1,170	1,170	1,238
Mean	1,294	1,167	1,422
Maximum/Minimum	1.8/1	1.5/1	1.6/1

* (1) Central City; (2) Fast Growth Suburb; (3) Slow Growth Suburb; (4) Independent City; (5) Rural.

A "Central City" district is defined as having a total population greater than 250,000. "Fast Growth Suburbs" are located close to Central Cities and have population growth rates higher than the suburban median. "Slow Growth Suburbs" are also located near Central Cities and indicate a population growth between 1960 and 1970 below the median of all suburban districts in the sample. Slow Growth Suburbs include wealthy residential communities and suburbs with substantial concentrations of commerce or industry. "Independent City" districts are those which have populations between 10,000 and 250,000 and are located beyond built-up Central City areas. Finally, "Rural" districts are those which contain no communities with populations as large as 10,000.

Note: A word about the sources of data is in order. In the short period of time in which this data was collected, it was necessary to compile pertinent school finance data from a variety of sources. All the data on Table 17, as well as the Title I revenue per pupil data on Table 16 was derived from the U. S. Office of Education Report, *Statistics of Local Public Systems: Finances, 1968-1969*. Adjusted Gross Income Per Pupil was derived from the National Educational Finance Project work, *Personal Income by School District, 1966-1967*. Property Value Per Pupil data on Table 16 was collected from the various published and unpublished reports of the state departments of education in the various states, and data on school tax rates and school tax burdens was derived by dividing local tax revenues obtained from USOE data into Adjusted Gross Income and Property Value in the respective school districts. Data for Table 18 was supplied by the staff of the Fleischmann Commission.

In all, data on more than 25 school finance variables was collected in a total sample of 71 districts in New York. A more comprehensive analysis of this data is currently being prepared and will be included in an appendix which will subsequently be published as a separate volume.

•• Alternative A: "Levelling up" to 65th percentile, minimum expenditure of \$1,167 or latest expenditure whichever is higher.

••• Alternative B: Alternative A plus educational need funds wherein low-achieving students are given per-pupil weighting of 1.5.

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OCTOBER TERM, 1972

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August 21, 1972

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MOTION

Amici hereby respectfully move for leave to file a brief urging affirmance of the lower court decision in the above-entitled case. Counsel for Appellees have consented to the filing of the attached brief. Counsel for Appellants have not so consented.

Amici are the Governors of the above-listed States. As Governors and chief executive officers of their respective States, Amici are responsible for upholding and carrying out the commands of the Constitutions

and laws of their States, including the provisions thereof requiring the establishment of public schools and commanding the children of their States to attend school for a substantial number of years. Each Amicus is responsible, as the elected representative of the entire citizenry of his State, for financial decisions affecting all State operations, including those pertaining to the support and finance of the public schools.

Amici are deeply concerned about the continuing crisis in public education and the difficulties facing public educational systems in their States and around the nation. Amici recognize that grave inequities now exist in the educational resources available to public school students, and that these inequities exist because of vast disparities in the local property tax bases upon which the various States have required local school districts to rely for the support of public education. Amici, whose States have educational systems which suffer in one degree or another from the same infirmities as the financing system here at issue, believe that the inequities in educational resources resulting from such systems are in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and that these inequalities must be eliminated.

In pursuance of their duties as chief executive officers of their States, Amici have thoroughly examined and are familiar with school financing problems.* As a result of these studies, Amici have concluded that it is

* Specific statements of the involvement of the Amici Anderson, Curtis, Kneip, Lucey and Milliken with school financing programs appear at pages III-VIII of Amici's Motion for Leave to File Brief submitted to this Court in connection with the Jurisdictional Statement.

necessary, in order to maintain a viable system of public education available to all without discrimination based upon wealth or other factors irrelevant to the educational process, to devise a system which provides:

- quality education for every child, regardless of his place of residence;
- a rational method of financing the educational system which assures the availability of the needed resources;
- equity of tax burden among the citizens of a state; and
- meaningful local control over educational matters where appropriate.

Amici believe that financing systems which meet the above-listed requirements, and which eliminate the wealth discrimination and resulting constitutional problems stemming from the current local property tax-based systems, can be instituted without great difficulty, social or administrative, by the adoption of school finance systems not dependent upon the wealth of the local school districts.

Amici further believe that the standard adopted by the court below is uniquely suited to bring about the achievement of a constitutional non-discriminatory method of public school finance without in any way infringing on the proper sovereign prerogatives of the various States, including those of which they are Governors. The decision of the court below sets forth a single easily comprehensible constitutional command and quite properly leaves it to the States to choose, as they can and must, from a multitude of possible financing systems.

For these reasons, Amici request that this Court grant leave to file the attached brief urging affirmance of the decision of the lower court.

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AS AMICI CURIAE

INTRODUCTION

Article VII, § 1 of the Constitution of the State of Texas provides that:

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Over the years since Texas, in its first statehood Constitution of 1845, adopted the predecessor of Article

VII, § 1, the method used to finance the State public school system has varied. Thus, while originally the schools were to be supported by the State directly, for some time Texas has supported its public schools in large part with funds raised from school district property taxes.¹

The details of the Texas financing system as it has evolved are complicated, but the general workings and effect of the system are both clear and undisputed:² the reliance upon local property taxes for school funds has made the local property tax base the primary determinant of the amount of funds available for the schools in any district, and this amount varies tremendously from district to district within the Texas school system.

Of the 79 Texas school districts with over 5,000 students, the richest has a tax base per pupil more than 23 times that of the poorest. By taxing at equal rates, the richest of these districts would have 23 times more dollars per pupil to spend on its schools than would the poorest. The Plaintiffs' Edgewood school district in metropolitan San Antonio could raise only \$37 per pupil in 1969-70 while the Alamo Heights school district, also in metropolitan San Antonio, was able with a lower tax rate to raise \$412 per pupil. Thus, the dif-

¹ A brief history of Texas' school financing system appears in 5 Governor's Committee on Public School Education, *The Challenge and the Chance: Public Education in Texas—Financing the System* 11-17 (1969) [hereinafter cited as *Public Education in Texas*].

² The parties stipulated below that the "facts are generally not in dispute." Appendix, p. 45 ¶ 6 [hereinafter cited as App.]. A full and comprehensible description of the Texas school finance system is J. Berke, A. Carnevale, D. Morgan & R. White, *The Texas School Finance Case: A Wrong in Search of a Remedy*, J. Law & Educ. (to appear in Fall, 1972).

ference in funds raised locally was due solely to the disparities in wealth between the two districts.³

In addition to the funds the local districts raise themselves, each district receives a direct payment from the State. These payments are made in recognition of the fact that the property tax-based system works great discriminations,⁴ and, in theory, are supposed to lessen the extent of the discrimination among districts. In fact, the grants to local districts are calculated in a fashion that not only does not substantially alleviate the differences between the rich and the poor districts, but in many cases actually provides more dollars to wealthy districts than to poor ones.⁵ Thus, Alamo Heights received \$250 per pupil in direct State grants in 1969-70 while Edgewood, despite the fact that it could itself raise less than one eleventh as much per student, received only \$242.

The court below agreed with Plaintiffs' contentions that the Texas school financing system outlined above substantially disadvantages children residing in property-poor districts. Indeed, the court found that Texas has chosen "to subsidize the rich at the expense of the poor" (App. 262) and enjoined Texas from continuing to make "the quality of public education a function of

³ See Pl. Ex. 12 based upon computer runs supplied by the State of Texas Education Agency. See also App. 217, 219.

⁴ It was the recognition of these discriminations by the Texas Legislature's Gilmer-Aiken Committee in 1948 that led to the adoption of the present system. See Gilmer-Aiken Committee, *To Have What We Must* (1948).

⁵ App. 208. See also United States Commission on Civil Rights, *The Texas School System* 31 (1972) (page cite is to the Commission-approved typewritten copy; publication in printed form is expected shortly).

wealth other than the wealth of the State as a whole." (App. 270).

The State's appeal thus raises in this Court the constitutionality of the discriminatory system presently used by Texas to finance public education, a system in which discrimination arises solely because the State has chosen to provide revenue for its schools based upon a factor—the wealth of the district in which the schools are located—having no relation whatsoever to any educational goal.

As State Governors with responsibility for the interests of all the children of their States, Amici are committed to reforming the present discriminatory systems of school financing, systems which plainly cannot and do not work,⁶ and replacing them with systems which operate without discrimination on the basis of local district wealth. That result, Amici believe, is dictated by equity and common sense, as well as constitutionally required.

Amici have concluded that there is no practical or administrative reason why revised systems of financial support of public school systems, consistent with the decision of the court below, cannot be instituted, and that public school systems of the type required to provide equal educational opportunities for *all* children—not merely those from rich school districts—can only result from the standard found constitutionally required by the court below. Amici therefore urge that the decision be affirmed.

⁶ See, e.g., President's Commission on School Finance, Schools, People & Money: The Need for Educational Reform 11-15 (1972) [hereinafter cited as President's Commission]; National Legislative Conference, A Legislator's Guide to School Finance 13-22 (1972).

ARGUMENT

**The Decision of the Court Below That the Provisions of the
Constitution and Laws of Texas Governing the Financing
of Public Education Violate the Equal Protection
Clause of the Fourteenth Amendment of the
United States Constitution Should Be
Affirmed**

Amici submit that because the present case involves public education and the manner in which such education is furnished to the nation's children, it has an importance far beyond that suggested by Appellants.

Appellants and their supporters seek to trivialize the present case by characterizing the issue as whether a "Proposition I" developed by "imaginative scholars" should proceed to "enshrinement in the Constitution of the United States." (App. Br. 8). Amici, State Governors deeply concerned about inequities in educational finance, submit that the real issue in this case is whether the Fourteenth Amendment prohibits States from providing more tax dollars for public education to rich districts than to poor districts. The fact that, in addition, the poor districts are taxed more heavily than rich districts to provide such funds merely serves to exacerbate the discrimination.

I. THE ROLE OF EDUCATION IN AMERICAN SOCIETY IS UNIQUE

A. EDUCATION IS A STATE FUNCTION

1. The States Are Required by Their Constitutions To Provide Free Public Education

The Constitutions of 48 of the 50 States require the State legislature to establish a system of public

schools.⁷ Article VII, § 1 of the Texas Constitution is typical in this regard:

A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

The history of the Texas constitutional provisions is illustrative of the significance of education as a State function. The 1827 Constitution of the Mexican State of Coahuila and Texas provided that the State was to establish schools in all towns. No schools were in fact established, and the neglect of public education by the State "was one of the chief grievances charged against the Mexican government" when Texas declared its independence.⁸ The Constitution of the Republic of Texas declared that:

It shall be the duty of Congress, as soon as circumstances will permit, to provide by law a general system of education. General Provisions, Section 5 of the Constitution of 1836.

This provision formed the basis for Texas' current constitutional requirement that the State establish a system of "free public schools."

⁷ See the table reproduced as an Appendix to this brief. Until the decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), all 50 States had constitutional provisions requiring public schools. In attempts to avoid the mandate of *Brown*, Mississippi made its constitutional provision discretionary with the State legislature and South Carolina repealed its constitutional provision altogether.

⁸ See Interpretive Comment, 2 Vernon's Constitution of the State of Texas Annotated 373 (1955).

2. Local School Districts Are Simply Agencies of the State

In interpreting this constitutional provision, the courts of Texas have recognized that education is a State function. Thus, it was observed in *El Dorado Independent School District v. Tisdale*, 3 S.W.2d 420, 422 (Tex. Comm. Civ. App. 1928), that:

[I]n constitutional terms, it is commanded that the Legislature shall 'establish and make suitable provision for the support and maintenance of an efficient system of public free schools.' The object, manifestly, is a state object: its achievement, as plainly, is to be in consequence a use of state power. . . .

Furthermore, the Texas courts, like the courts in other states,⁹ are emphatic in asserting that local school districts are nothing more than administrative units set up for the convenience of the State in administering its system. In *Treadway v. Whitney Independent School District*, 205 S.W.2d 97, 99 (Tex. Civ. App. 1947) the court declared:

[W]hen carrying out the functions for which it was thus created, [a school district] could act only as an agent of the state. . . . As a result of the acts of the Legislature our school system is not of mere local concern but is statewide. While a school district is local in territorial limits, it is an integral part of the vast school system which is coextensive with the confines of the State of Texas.

These court decisions recognize what is the fact not only in Texas, but in every one of the United States: education is a State function.

⁹ See the decisions discussed in A. Wise, *Rich Schools, Poor Schools* 94-98 (1968).

3. State Statutes Regulate Every Aspect of Public Education

State control in Texas, as elsewhere, extends to in-depth statutory regulation of the educational system. Thus not only does the State of Texas create, consolidate and abolish school districts (Ch. 19, Texas Education Code, Acts of 1969, Ch. 889),¹⁰ but it regulates their activities down to the minutest detail. The Texas Education Code contains some 250 pages of statutes controlling, *inter alia*, mandatory subject matter, acceptable textbooks, teacher qualifications and tenure, personnel salary bases, special programs, length of school day, and a variety of other details. Acts of 1969, Ch. 889, *passim*.¹¹ Most importantly, the school districts have taxing power only because and to the extent that the State has delegated its power to tax for schools. Tex. Stat. Ann. arts. 2802g, 2802h, 2802i, and 2802i-1—2802i-32, as amended by Acts of 1969, Ch. 889.

While certain of the details vary from State to State, the State's control of the educational system and of the school districts as a part of that system was aptly put by the Supreme Court of Illinois in *People v. Deatherage*, 401 Ill. 25, 31-32, 81 N.E.2d 581, 586 (1948):

A community school district, like any other school district established under enabling legislation, is

¹⁰ See also *United States v. Texas*, 321 F.Supp. 1043 (E.D. Tex. 1970).

¹¹ Among the Texas Education Code's provisions regulating the details of school operations are §§ 4.15-.16 (criminal penalties for failure to teach required subjects); §§ 21.101-.112 (required subjects); §§ 12.11-.27, 12.62 (schools required to use State-approved textbooks and approval procedures established); Chs. 13 and 21, Subch. D (procedures for teacher certification and dismissal established); § 16.31 (teachers' base pay fixed); §§ 11.03-.11 (special programs); § 21.002 (length of school day); § 2.06 (State oath required of teachers); § 11.52 (uniform system of forms and reports for schools).

entirely subject to the will of the legislature thereafter. With or without the consent of the inhabitants of a school district, over their protests, even without notice or hearing, the State may take the facilities in the district, without giving compensation therefor, and vest them in other district agencies. . . . The area of the district may be contracted or expanded, it may be divided, united in whole or in part with another district, and the district may be abolished. All this at the will of the legislature. The "property of the school district" is a phrase which is misleading. The district owns no property, all school facilities, such as grounds, buildings, equipment, etc., being in fact and law the property of the State and subject to the Legislative will

In sum, school districts are simply administrative units created by the States for their convenience in the operation of the State school system, in accordance with the mandate of each State's constitution.¹²

B. THE STATES HAVE HISTORICALLY TREATED EDUCATION AS BEING DIFFERENT FROM OTHER GOVERNMENTAL SERVICES

For both historical reasons, and reasons relating to the functioning of the American political system, education occupies a place in the hierarchy of rights and privileges of a citizen very different from welfare, housing, police protection and other such governmental services. Even before the United States as we now know it was formed, the Continental Congress, operating under the Articles of Confederation, required in the

¹² This point could hardly be made more succinctly than it has been by the State of Florida, Fla. Stat. Ann. § 299.01: "Public education is basically a function and responsibility of the state."

Northwest Ordinance of 1787 that "schools and the means of education shall forever be encouraged." 1 U.S.C. pp. xxxviii-xxxix. As noted above, 48 of the 50 States require in their Constitutions that the legislature establish and maintain a system of public education. Only one State (New York) requires in its Constitution that the State government provide any service other than education (welfare). Furthermore, less than half the State Constitutions even make specific mention of any other services which the State may elect to provide. In addition, every State but one requires compulsory school attendance of its children.¹³ Thus, the unique place of education in America is secure: education, and only education, is a right of American children guaranteed by virtually every single State.

C. EDUCATION IS INTIMATELY BOUND UP IN THE DEMOCRATIC POLITICAL PROCESS

One need only look at the State Constitutions to discover why education is treated so differently from all other services provided by the States: education has always been considered to be a necessary part of the democratic political process, a support without which the political system of the United States could not stand.¹⁴ Thus, like the Texas constitutional provision

¹³ See the table reproduced as an Appendix to this brief. Mississippi repealed its compulsory attendance statute in an attempt to avoid the impact of *Brown v. Board of Education*, *supra*.

¹⁴ Interestingly, Virginia historically recognized the special relationship between voting and education by providing that two-thirds of its poll tax be used "exclusively in aid of the public free schools." Constitution of Virginia, Article VIII, § 173. See *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 664 n.1 (1966).

quoted at pages 2 and 6, *supra*,^{14a} the following provision of the Minnesota Constitution is typical:

The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature to establish a general and uniform system of public schools. Constitution of Minnesota, Article VIII, § 1.

This Court has also recognized the special role of education in our democratic society:

Thomas Jefferson pointed out early in our history that some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. Further, education prepares individuals to be self-reliant and self-sufficient participants in society. We accept these propositions. *Wisconsin v. Yoder*, 92 S. Ct. 1526, 1536 (1972).

Indeed, Mr. Chief Justice Burger in *Yoder* noted that a figure no less influential than Thomas Jefferson even proposed to condition citizenship on the ability to read. *Id.* at 1538 n. 14.

In a concurring opinion in *Yoder*, quoting *Brown v. Board of Education*, *supra*, Mr. Justice White reaffirmed that:

Today education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expendi-

^{14a} See also Texas Education Code, Acts of 1969, Ch. 889, § 2.01 which provides:

The objective of State support and maintenance of a system of public education is education for citizenship and is grounded upon a conviction that a general diffusion of knowledge is essential for the welfare of Texas and for the preservation of the liberties and rights of citizens.

tures for education both demonstrate our recognition of the importance of education to our democratic society. . . . It is the very foundation of good citizenship.

Id. at 1544. See also *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967); *Shelton v. Tucker*, 364 U.S. 479, 487 (1960); *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203, 231 (1948) (Mr. Justice Frankfurter, concurring); *cf. Epperson v. Arkansas*, 393 U.S. 97 (1968).

Thus the States, though their Constitutions, and this Court, through its decisions, have enunciated the same conclusions as those who have conducted empirical studies of the relationship between voting and participation in the political process, on the one hand, and education, on the other: a citizen's willingness and ability to participate in the civic and political life of these United States is uniquely dependent upon education.¹⁵

Amici believe, therefore, that education's special relationship to the political process, recognized by the States themselves, makes education a uniquely important State function which is distinct from all other State services of whatever nature.

¹⁵ Scholars whose studies have led to this conclusion include J. Guthrie, G. Kleindorfer, H. Levin & T. Stout, *Schools and Inequality* 165-67 (1971), reprinted in *Hearings Before the Senate Select Comm. on Equal Educational Opportunity*, 92nd Cong., 1st Sess., pt. 16C, Appendix I, pp. 7068-70 (1971); R. Hess & J. Torney, *The Development of Political Attitudes in Children* 217-18 (1967); R. Agger & V. Ostrom, *Political Participation in a Small Community*, in H. Eulau (ed.), *Political Behavior* 138-48 (1956); and A. Campbell, *The Passive Citizen*, *Acta Sociologica*, Vol. VI, No. 1-2 at 9-21 (1962).

Voting statistics which demonstrate the same result have been compiled by the United States Department of Commerce, Bureau of the Census, *Years of Schooling Completed—Reported Voter Participation in 1968 and 1964*, Current Population Reports, Series P 20, No. 192, Table 11 (1968).

II. THE TEXAS SCHOOL FINANCING SYSTEM IS DISCRIMINATORY

On its appeal, Texas does not dispute, as it could not, that its financing system provides substantially more money per child to property-rich than to property-poor districts. Instead, Texas and its supporters¹⁶ maintain that the fact that under the present system the rich districts receive two or three or even ten times as much funding per student as do their poorer brethren is irrelevant because there is no showing that money makes a difference in the quality of the education furnished to school children. (App. Br. 5, 16-25).

A. EQUALITY OF EDUCATIONAL OPPORTUNITY IS TOTALLY UNRELATED TO STUDENTS' SCORES ON STANDARDIZED TESTS

As other Amici point out, much of the argument Texas makes on this point is based on its misreading of the relevant educational literature.¹⁷ Far more importantly, however, Appellants are confusing State input into the public schools (in the form of funds) with a particular type of output of the schools (students'

¹⁶ It is noteworthy that the Amici filing briefs in support of Appellants herein consist entirely of two categories—the first is State Attorneys General, who are required as their States' chief legal officers to defend State laws against constitutional attack, and the second is the legal officers representing a selection of the richest school districts in the nation, *e.g.*, Beverly Hills and San Marino, California, Grosse Point and Bloomfield Hills, Michigan, and Montgomery County, Maryland.

¹⁷ See Briefs Amicus Curiae of the National Education Association, et al. [hereinafter cited as NEA Brief] and John L. Serrano, Jr., et al. [hereinafter cited as Serrano Brief]. *Compare*, Office of Education, Equality of Educational Opportunity 316 (1969) (The Coleman Report) with Report of Commissioner's Ad Hoc Group on School Finance, Department of Health, Education and Welfare, in Hearings Before the Senate Select Comm. on Equal Educational Opportunity, 92nd Cong., 1st Sess., p. 8388 (1971).

scores on standardized tests). While perhaps a relevant indicator in some cases of the effectiveness of public school education, test scores are simply not relevant to a determination of whether children are being afforded equal educational opportunity by a State. On the other hand, there is no doubt whatever as to the direct relationship between expenditures and educational opportunities.¹⁸ As the President's Commission noted:

[M]oney builds schools, keeps them running, pays their teachers, and, in crucial, if not clearly defined ways, is essential if children are to learn. President's Commission xi.

**B. DISCRIMINATION IN THE PROVISION OF FUNDS FOR
EDUCATION IS THE CRITICAL ISSUE**

There is an evident difference between wealthy and poor school districts. Wealthy districts often have well-trained and experienced teachers, modern, well maintained facilities, new and up-to-date textbooks, first class libraries, language laboratories, special art and music classes, experimental programs, and a host of other educational advantages. Poor districts frequently have under-trained and temporary teachers, dilapidated, often hazardous facilities, old textbooks, inadequate library facilities, no special classes or teachers

¹⁸ Indeed, Appellants cannot quite bring themselves to consistency in their argument that money is irrelevant in providing educational opportunities, for they point out as evidence of their concern for education that in the period of 1960-1970 the "increase in expenditures . . . [in Texas] was from \$750 million to \$2.1 billion, while the numbers of students increased only 37%, so that expenditures per student doubled from \$416 to \$855." (App. Br. 9). It is interesting that while the State found 1960's \$416 per pupil too little, and hence more than doubled that figure by 1970, Plaintiffs' Edgewood school district reached \$416 for the first time ever in 1970—and at that time was \$439 below the State average. The figures are from Texas Research League, Public School Finance Problems in Texas 14 (1972).

for subjects such as art, music, or foreign languages, and overburdened administrators.¹⁹ Any parent, any teacher, any student knows that in every one of the myriad of ways that distinguish a school from a place which merely serves to keep children off the street, money makes a critical difference. Regardless of whether Appellants acknowledge this, this Court already has.

In *Sweatt v. Painter*, 339 U.S. (1950), this Court was called upon to decide whether the two racially exclusive law schools provided by the State of Texas, one for whites only, one for blacks only, met the test of "substantial equality" as then required under the separate but equal doctrine. This Court held that the two schools were not substantially equal:

[W]e cannot find substantial equality in the educational opportunities offered white and Negro law students by the State. In terms of number of the faculty, variety of courses and opportunity for specialization, size of the student body, scope of the library, availability of law review and similar activities, the [white only] University of Texas Law School is superior. What is more important the University of Texas Law School possesses to a far greater degree those qualities which are incapable of objective measurement but which make for greatness in a law school. Such qualities, to name but a few, include reputation of the faculty, experience of the administration, position and influence of the alumni, standing in the community, traditions and prestige. It is difficult to believe that one who had a free choice between these law schools would consider the question close. *Id.* at 633-34.

¹⁹ See generally, *Robinson v. Cahill*, 118 N.J. Super. 223, 287 A.2d 187 (1972).

Sweatt is on all fours with the current case. Substitute "rich districts" and "poor districts" for "white" and "Negro," and replace "law school" with "public school" and we have the situation currently facing the nation's school districts. As this Court held in *Sweatt*, schools whose disparities are as severe as those listed above—which Appellants do not and cannot deny on the record before the Court—are unequal, and that inequality flows from one source: discrimination in funding due to existing public school finance systems such as that of Texas.²⁰

²⁰ Equally dispositive of Appellants' arguments as to lack of discrimination is this Court's decision in *Gaston County v. United States*, 395 U.S. 285 (1969). Gaston County sought relief from the provisions of the Voting Rights Act of 1965 which forbade the use of literacy tests under certain circumstances. The United States opposed the granting of relief on the ground that the reimposition of a literacy test would place a specially onerous burden on the black citizens of the county, since the county had traditionally maintained separate and inferior schools for blacks.

This Court affirmed the lower court's refusal to allow Gaston County to reimpose a literacy test, finding that the black schools had been inferior to the white schools. The Court based its conclusion on several findings:

1. the property tax base of the white schools was from two to five times that of the black schools (here wealthy Alamo Heights has over 6 times the property tax base of Plaintiffs' Edgewood district, App. 216, and variations of as much as 23 times in property tax base between districts occur elsewhere in Texas);
2. the teachers in the black schools were less qualified than those in the white schools, since 95% of the black but only 5% of the white teachers had emergency credentials (here the Plaintiffs' Edgewood district had 47% of its teachers on emergency certificates, while the wealthy Alamo Heights district across town had only 11%, App. 117); and
3. the salaries of the black teachers ranged around 50% of those of the white teachers (here Edgewood's salary scale was consistently around 80% of Alamo Heights', App. 118).

The similarities to the present case are striking.

**C. A CORRELATION BETWEEN THE POVERTY OF A SCHOOL
DISTRICT AND THE POVERTY OF ITS RESIDENTS NEED
NOT BE ESTABLISHED TO SHOW UNCONSTITUTIONAL
DISCRIMINATION**

Appellants argue that the findings of the court below really show only a discrimination against school districts rather than against individuals²¹ and that there-

²¹ In fact, the court below found, based upon the evidence in the record before it—evidence which Appellants did not at the time contest—that in Texas the rich districts have the highest median family income and the poor districts the lowest. 337 F.Supp. at 282; App. 259.

In their attempt to do on appeal what they could not or would not do before the trial court, Appellants rely on S. Goldstein, *Inter-district Inequalities in School Financing: A Critical Analysis of Serrano v. Priest and Its Progeny*, 120 U. Pa. L. Rev. 504 (1972), to attack the affidavit testimony of Joel S. Berke (App. 198). Professor Berke's affidavit demonstrated that, in Texas at any rate, property-rich districts and high family income go hand in hand. In his attack on the undisputed evidence before the court below, Professor Goldstein failed to note that, while the number of districts in the top (rich) and bottom (poor) categories is small, the number of students involved is not: the four poorest districts in the sample used by Professor Berke had over 50,000 students, 10% of the students in the entire sample. Furthermore, the direct correlation between district wealth and familial wealth remains in effect when the lines are redrawn to leave 20% of the students in the top category (i.e., richest school districts) and 20% of the students in the bottom category (poorest districts). In short, the statistical correlation between rich districts and family wealth is true for all the districts at the top and bottom of the wealth chart. Hence the study supports quite adequately the court's finding that there is an affirmative correlation between poor districts and poor people.

The attempts by Appellants to introduce new evidence before this Court illustrate perfectly the problems created when a party asks an appellate court to rely upon evidence not in the record. Not only does this tactic preclude the opposing party's effective rebuttal of the newly offered evidence, it allows the moving party to choose unrepresentative bits and pieces of the story. Here, for example, the Appellants rely on an article in the *Kansas Law Review* as demonstrating the absence of a relation between school district and

fore the court below was unjustified in holding such discrimination a violation of equal protection. (App. Br. 30-31). Despite Appellants' arguments to the contrary, the fact that the State has created and maintained a system which discriminates against groups rather than against specific individuals does not render such discrimination acceptable under the decisions of this Court. For it is not, and never has been, a principle of constitutional law that the State may freely discriminate against a variety of individuals if only it divides them into districts or groups.

For example, in *Reynolds v. Sims*, 377 U.S. 533 (1964), this Court struck down a legislative districting system which gave additional power to rural areas through a county representation system. "One part of the State" was given greater representation than "another part of the State." *Id.* at 562. The vice there was that the State system favored one district at the expense of another. Of course, the Court recognized in *Reynolds* that the real parties in interest, as here, were people—there voters, in the case at bar school children and taxpayers—since the ultimate weight of discrimination against groups is borne by their members. *See also Gray v. Sanders*, 372 U.S. 368 (1963).

Equally illustrative is *Bullock v. Carter*, 405 U.S. 134 (1972). There the State of Texas had established a system of filing fees requiring candidates for office

individual wealth. (App. Br. 22-23.) Yet Appellants fail to mention that an authoritative study done in 1970, and repeated in 1972, by the Pennsylvania Department of Education showed a 96% correlation statewide between school district and individual wealth. Report of the Pennsylvania Department of Education, Bureau of Educational Research (May 1970); Report of the Pennsylvania Department of Education, Bureau of Educational Research (August 1972).

to pay up to \$8,900 as a prerequisite for appearing on the ballot. The Court, in rejecting the State's argument that no discrimination against identifiable individuals was involved, struck down the statutes at issue on the ground that they discriminated against "the voters supporting a particular candidate" who could not afford the filing fees, despite the absence of "discrete and precisely defined segments of the community" who could be identified as the victims of the discrimination. *Id.* at 144.

And in *Gordon v. Lance*, 403 U.S. 1 (1971), this Court in describing *Cipriano v. Houma*, 395 U.S. 701 (1969), and *Gray v. Sanders*, *supra*, stated that the "defect" in the statutory systems there at issue "lay in the denial or dilution of voting power because of group characteristics—geographic location and property ownership. . . ." *Id.* at 4.

Thus, as the Court has recognized, the discrimination against a group is, in effect, discrimination against each of its members because of their membership in the group.

III. THE DISCRIMINATION AT ISSUE REQUIRES CLOSE JUDICIAL SCRUTINY

Appellants and their supporters contend that the court below erred in applying a "compelling interest test" in determining whether the discriminatory school financing system they defend amounts to "invidious discrimination" in violation of the Fourteenth Amendment of the Constitution of the United States. They maintain that the discrimination involved herein should be subject only to a so-called "rational basis" test. (App. Br. 26-37.) Thus the Court is presented with pages of argument aligning the "compelling interest"

cases²² on the one side and the "rational basis" cases²³ on the other, with the Appellants attempting to distinguish the one from the other according to this label or that.

But this Court's sophistication with equal protection issues has gone beyond that point. For the real question, as this Court has indicated, does not depend upon attaching labels but upon the delicate balancing of interests required by the Constitution. Thus, the proper question to be asked in determining whether Texas' discriminatory system can pass constitutional muster is threefold, for the inquiry concerns:

the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification. *Dunn v. Blumstein*, 405 U.S. 330, 335 (1972).

See also Weber v. Aetna Cas. & Sur. Co., 92 S. Ct. 1400 (1972); *Williams v. Rhodes*, 393 U.S. 23 (1968); *Carlington v. Rash*, 380 U.S. 89 (1965).

Amici have discussed above the interests affected by the classification (education) and the character of the classification (school district wealth).²⁴ It remains to examine the governmental interests asserted in support

²² *E.g.*, *Griffin v. Illinois*, 351 U.S. 12 (1956); *Harper v. Virginia State Board of Elections*, *supra*; *Bullock v. Carter*, *supra*.

²³ *E.g.*, *Dandridge v. Williams*, 397 U.S. 471 (1970); *James v. Valtierra*, 402 U.S. 137 (1971); *Jefferson v. Hackney*, 92 S.Ct. 1724 (1972).

²⁴ As indicated above, Appellants appear to argue that the applicable "classification" is not wealth but geography. App. Br. 20. Amici are not interested in debating the point, since both classifications are equally objectionable. *See Reynolds v. Sims*, *supra*; *Gray v. Sanders*, *supra*; *Bullock v. Carter*, *supra*.

of the classification against the background of the discriminatory provision of educational opportunities on the basis of school district wealth. Before doing so, however, it is necessary to discuss the substantiality of the State interests required in order to justify the discrimination.

Amici have demonstrated the relation of education to voting and the political process, a relation historically accepted by all the United States, and the unique place of education in our society. Others argue, Amici think persuasively, that education is a "fundamental interest."²⁵ Amici have also demonstrated that the discrimination involved here—the provision of more money to the children of rich school districts than to the children of poor ones—is substantial. This court has held such wealth discriminations to be "suspect." *Harper v. Virginia State Board of Elections, supra*. However, Amici do not believe that the resolution of this case turns upon whether education is found to be a "fundamental interest" or whether classification according to school district wealth is held "suspect."

The critical point is that education as a governmental function is singularly important to the political process and, as a result, is unique in its history and treatment by every State. Education is thus in a vastly different position from all other government "services," such as welfare,²⁶ housing,²⁷ fire or police protection, sanitation, and the like. In addition, the discrimination against the children resident in poor school districts

²⁵ See Serrano Brief.

²⁶ See *Jefferson v. Hackney, supra*; *Dandridge v. Williams, supra*.

²⁷ See *James v. Valtierra, supra*.

is substantial and based upon a factor—wealth—completely extraneous to educational considerations. At the very least, such a serious discrimination in the provision of education deserves and requires that this Court look carefully into the rationale asserted to justify the discrimination. And upon such an examination, it becomes clear that Texas not only would serve no “compelling interest” by preserving its present discriminatory school financing system, but that it would serve no rational interest at all.

**IV. TEXAS HAS NO INTEREST—COMPELLING OR
OTHERWISE—IN PRESERVING THE PRESENT
IRRATIONAL AND DISCRIMINATORY
SCHOOL FINANCING SYSTEM**

In all the various briefs filed by Appellants and the Amici who support them, there is no attempt made, for obvious reasons, to explain the desirability or sense of providing funds for education so that children who live in rich districts receive more money to spend on education (even though their parents make less tax effort), while children who live in poor districts receive less money (even though their parents try harder). Instead, the Appellants now advance the claim that the discriminatory system is justified because it is necessary to provide “local autonomy” and “local control.” Under this argument, the existing system, with all its attendant inequities, is required in order to effectuate the State’s purposeful decentralization of public education. The facts are otherwise.

A. THE PRESENT SYSTEM IS IRRATIONAL AND UNWORKABLE

In connection with their contention that the present system is necessary for local control of the schools, Appellants assert that “The Texas plan is not the re-

sult of happenstance." (App. Br. 37). However, an analysis of the evolution of the Texas system reveals that it—along with the educational financing systems of most other States—is in fact the product of virtually complete happenstance.

Texas adopted a system of local financing of schools in the last century when this nation was of substantially different composition than it is today. In the nineteenth century, inequalities in wealth among school districts were not pronounced and the expenditures required for education were comparatively modest. Therefore it is conceivable that local funding may have once made a good deal of sense. The coming of industrialization and mechanization in the twentieth century changed all that rapidly, however. In the space of a few decades there were vast differences in ability to support the schools where there had been few before.²⁸

By the 1920's it was commonly recognized by educators that something had to be done to prevent the total collapse of the States' school financing systems. For already the pattern later to emerge fully was becoming clear: attempting to rely wholly on local districts to finance public education could not work. The pioneering work done by Strayer and Haig in 1923,²⁹ cited by Appellants to suggest that the current system is the result of repeated studies (App. Br. 36), came to the conclusion that the States had to "equalize" the vast inequities arising from the basic local property tax-based system.

²⁸ E. Fuller & J. Pearson, *Education in the States: Nationwide Development Since 1900*, p. 204 (1957).

²⁹ G. Strayer & R. Haig, *Financing of Education in the State of New York* (1923).

The "foundation programs" resulting from the Strayer-Haig study may well have constituted an "enlightened approach" in the 1920's when they were first developed, particularly in contrast to what came before, but that in no way suggests that the crazy-quilt patchwork system that we now see was purposefully or rationally created.

By way of illustrating the irrationality of the present system, which Appellants suggest reflects the "judgment" of "legislative bodies" as to "wise policy" (App. Br. 25), let us assume that a State legislature wished to start from scratch to devise a program to finance public education in the State. If the legislature started from the proposition that the State should provide a free public education to all its children, it is inconceivable that it would establish a system providing that the monies raised would be disbursed to the local units administering the schools in direct proportion to the value of the property within those units. Such a result would be inconceivable because there is no rational connection between the purpose for which the funds would be spent, namely, the education of children, and the value of real property in the geographic unit responsible for utilizing the funds to educate children.³⁰

As the President's Commission has stated:

The process by which funds are raised and distributed for public education throughout the

³⁰ The result would be even more clear where the geographic units were school districts, the boundaries of which have historically often been motivated by economic, racial or political considerations having nothing whatsoever to do with any legitimate educational purpose, let alone the raising of tax monies. See *United States v. Texas*, *supra*.

United States has, during the past century, evolved into a dense jungle of legislation, formulas, and procedures. More than that, whatever its initial intentions and results, it is no longer effective or equitable by the present criteria we apply to measure public purposes. President's Commission 26.

Thus it is clear that the present discriminatory system is in no meaningful sense the product of a "policy" of "legislative bodies." Rather it is the ultimate in sheer happenstance, a product of historical accident. In fact, the Texas Governor's Committee on School Finance observed that the present system "almost defies comprehension" and is based upon factors "a little better . . . than sheer chance, but not much."³¹ Indeed, as a recent report dealing with another State's similar system of financing concluded:³²

It is difficult to conceive of a less workable structure, fraught with such possibilities for inaction and lack of focus for leadership, than the one existing at the state level in education.

B. UNLIKE THE PRESENT SYSTEM, THE SYSTEMS PERMITTED BY THE LOWER COURT DECISION WOULD NOT INHIBIT LOCAL CONTROL OF EDUCATION

1. Under the Present System, Local Control Exists Only for the Rich Districts

The present system of school finance is not necessary for local control of the schools. In fact, the exact opposite is true: the present system prevents meaningful local control by all except the richest districts.

³¹ Public Education in Texas, 57, 48.

³² Office of Planning Coordination, Michigan Bureau of Policies and Programs, A Chronology of Educational Reform 1 (1970).

Texas, like other States, has created school districts and made many of them poor:

[T]he case [is] unusual in the extent to which governmental action is the cause of the wealth classifications. The school funding scheme is mandated in every detail by the California Constitution and statutes. Although private residential and commercial patterns may be partly responsible for the distribution of assessed valuation throughout the State, such patterns are shaped and hardened by zoning ordinances and other governmental land-use controls which promote economic exclusivity. . . . Governmental action drew the school district lines, thus determining how much local wealth each district would contain. . . . *Serrano v. Priest*, 5 Cal. 3d 584, 487 P.2d 1241, 1254 (1971).³³

Having created and perpetuated rich and poor districts, the State then leaves it to such districts to go beyond the amount of the direct State grants "as their desires and resources permit." (App. Br. 6). This, according to Appellants, is the essence of local control.

The facts belie this contention. Plaintiffs' Edgewood district, taxing at the highest rate in San Antonio, was able to raise \$37 per student in 1969-70. Even with the State direct grant of \$242 per pupil, Edgewood had less than half the funds available per pupil as did the average Texas school district.³⁴ As a result of its poverty, Edgewood could not provide such essentials as adequate classrooms, sufficient library resources, or experienced teachers, and the district had to forego

³³ See also *Van Dusartz v. Hatfield*, 334 F.Supp. 870, 876 (D. Minn. 1971).

³⁴ See notes 3 and 18, *supra*.

programs available to richer districts.³⁵ This occurred despite the fact that Edgewood's tax rate was the highest in its area. It was not Edgewood's "desire," or the "lack of concern" on the part of Edgewood parents, which made Edgewood unable to afford what the richer districts had. It was, quite simply, poverty.

In contrast, Alamo Heights, a wealthy district also in San Antonio, although taxing itself at a lower rate than did Edgewood, raised \$412 per student and, in addition, received \$250 in direct state grants in 1969-70.³⁶ Alamo Heights could afford the luxury of local control, of deciding where to spend the funds the State of Texas has given it. Edgewood had no such luxury. The simple fact is that the image of local control over financing of education is completely illusory for a district such as Edgewood because of its poverty.

Nevertheless, Appellants contend:

The Court below thought that the choice Texas gives to school districts was illusory since "poor" districts in reality have no choice. Even though they tax themselves heavily they cannot raise much money (337 F.Supp. at 284, App. 259). But this is not like *Hargrave v. Kirk*, 313 F.Supp. 944 (M.D. Fla. 1970), *vacated* 401 U.S. 476 (1971), where the state made it impossible as a matter of law for a poor family or school district to provide an expensive education. Here the state has assured every child in every school district an adequate education. It leaves to the people of each district the choice whether to go beyond the minimum and, if so, by how much. In fact, every district in the state does go beyond the minimum

³⁵ App. 236-38.

³⁶ See note 3, *supra*.

foundation program (App. 57). Thus the people of each district do in fact have a choice and have exercised it. (App. Br. 35.)

Contrary to Appellants' assertions, the present case is identical to *Hargrave*. In addition to making it impossible "as a matter of law" for a poor school district to provide a quality education,³⁷ Texas, like most other States, has made it impossible as a matter of fact by creating and maintaining property-poor school districts.

2. The Systems Permitted by the Decision of the Court Below Allow Local Control for All Districts

Under the standard proposed by the court below (whether labelled "fiscal neutrality" or something else), there are many ways in which Texas, or any other State, could structure its educational finance system so as to leave financing at the local level and at the same time eliminate the present interdistrict discrimination. Under the rule adopted by the court below, of course, this type of decision is, as it should be, left to the State.

One method by which a State could retain local level financing is the so-called district power-equalizing approach whereby the State would guarantee all the dis-

³⁷ Texas, like Florida, imposes legal restrictions on the poor districts' ability to raise funds through the mechanism of statutory maximum limits on the tax rates which local districts may impose for education. The statutory maximum allowed for local taxing efforts varies according to the size of the school district, but is in most cases around \$1.75 per \$100 assessed valuation. Tex. Stat. Ann. arts. 2802g, 2802h, 2802i, and 2802i-1—2802i-32, as amended by Acts of 1969, Ch. 889. Needless to say, such limits weigh lightly on the rich districts which can obtain substantial revenues at low rates.

tricts the same amount of revenue for any given level of tax effort.³⁸ Another method would be for the State to reapportion the local districts so that the value of taxable property within each district is approximately the same.³⁹ Yet a third approach would be for the State to remove commercial, industrial and mineral property from the local tax roll, tax such property on a statewide basis, and return the revenues to the local districts in a manner intended to equalize the disparities

³⁸ For a fuller description of how this system would work, see J. Coons, W. Clune & S. Sugarman, *Private Wealth and Public Education* 201-42 (1970). Appellants argue that this would be politically unattainable because the richer districts would block any changes in the financing system which operated to reduce the revenues which they can obtain for education without making comparatively greater tax effort. Credibility is lent to this argument by the fact that it is precisely the political power of the richer districts coupled with the benefits they obtain from the existing system that is responsible, as Amici have discovered in their attempts to achieve reform of educational finance in their States, for the perpetuation of the existing discrimination against poorer districts. However, if the richer districts block enactment of legislative programs aimed at leaving financing of education at the local level while eliminating discrimination in its results, the responsibility for any resulting loss of local control will fall on the very same rich districts which seek to defend the present system by contending that its elimination will destroy local control. Appellants' position thus reduces itself to the proposition that if the courts eliminate the unjustifiable benefits the rich districts obtain from the present system, those rich districts will, in response, destroy local control of public education.

³⁹ Appellants object that this method is impossible and not to be taken "seriously." (App. Br. 14). In fact, this type of reapportionment is taking place continuously as the number of school districts declines around the country. See National Education Finance Project, *Alternative Programs for Financing Education* 104-05 (1971). Indeed, the State of Texas routinely makes calculations of similar complexity in conjunction with its current "foundation" program. See *Public Education in Texas* 45-58.

arising from variations in the value of the residential property remaining in the local tax base. Other methods involving various combinations of the above with State equalizing funds obtained from sources other than local property taxes could be enumerated at length. All of these preserve local control, yet are consistent with the provision of a nondiscriminatory education.

To be sure, it is up to the State under the lower Court's decision to determine whether education shall be financed or controlled locally or on a statewide basis. However, as Amici have pointed out above, school districts are now and always have been mere instrumentalities of the State. Since any State could choose at present to finance education on a statewide basis and since the lower court decision does not oblige a State to finance education in any particular manner, it is difficult for Amici to understand why any decisions which States might make in the future to finance education on a statewide basis can be considered to be a reduction of local autonomy compelled by the decision in this case.

In any event, State decisions as to school finance systems do not go to the heart of local control. As this Court has recognized, local control of the public schools has numerous advantages in that it allows those who best know how the schools are operating to determine those aspects of the operation of the schools which can and should vary according to local conditions. *Wright v. Council of the City of Emporia*, 92 S. Ct. 2196, 2206 (1972). Amici do not disagree with this premise. However, even if a State should elect to finance education on a statewide basis, that would not affect local control over such things as "curricular decisions, the

structure of grade levels, [and] the planning of extra-curricular activities. . . ." See *Id.* at 2211 (dissenting opinion of Mr. Chief Justice Burger). Nor would full State funding of education affect local decision-making power over personnel decisions, administration of the schools, or the allocation of the district's revenue among different educational objectives. In sum, even a State takeover of educational finance need not reduce local control over the public schools.

As Amici have shown above, Texas' current system of school finance does not promote local control of public education and, furthermore, is neither rational nor workable. In fact, the current system, by depriving poor school districts of the funds to pursue programs readily available to the rich districts, precludes the poor districts from enjoying the benefits of meaningful local control. On the other hand, the rule adopted by the court below is not only educationally sound and rationally based, but allows both the rich and poor districts the benefits of local control. It is evident, therefore, that Appellants' arguments that the State is pursuing the valid interest of promoting local control in maintaining its discriminatory finance system are entirely devoid of merit.

Accordingly, the State has no interest—compelling or otherwise—to justify providing educational opportunities in a discriminatory manner based upon district wealth. In view of the educational interests and the nature of the discrimination involved, under the established constitutional principles discussed earlier this Court must conclude that the Texas school financing system is violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

**V. APPELLANTS' CONTENTIONS AS TO THE CATASTROPHIC
EFFECTS OF AN AFFIRMANCE OF THE LOWER
COURT DECISION ARE WITHOUT MERIT**

The foregoing analysis has demonstrated that the Texas school finance system is, as the lower court held it to be, unconstitutional. Appellants and the Amici supporting their position, however, seek to avoid the impact of the constitutional requirements by assertions that an affirmance of the lower court decision would have catastrophic effects on State public education. Amici are in a particularly good position, as State Governors active in the area of school finance reform, to evaluate the accuracy of these predictions and have no hesitation in stating to this Court that such predictions are without merit. Appellants, and their supporters, make the following arguments, which Amici will discuss *seriatim*:

1. Appellants maintain that nondiscrimination would require a tremendous increase in educational expenditures. App. Br. 39-40; Brief Amicus Curiae of Montgomery County et al. 99-102 [hereinafter cited as *Montgomery County Brief*].⁴⁰ This is not so. While it is true that if a State chooses to equalize all schools at the level of spending now enjoyed only by the wealthiest districts there would be an increase in educational outlays—although not a tremendous one—a State is free to choose the level of equalization to insure that there is little cost increase. The President's Commission on School Finance has recently completed a study of this subject which included a thorough analytical treatment of the cost factors involved.

⁴⁰ Inconsistently, certain Amici also argue that the decision below will result in less funds being spent on education with resulting "enforced mediocrity" for the public schools. *Montgomery County Brief* 48-54. There is no justification in the record, or otherwise, for such a contention.

According to the President's Commission, Texas, which currently spends over \$1.5 billion annually on its schools, would increase costs no more than \$40 million by converting to equalized schools if it chose to equalize payments at the 50th percentile.⁴¹ This amounts to an increase of around 2.6%—less than that required annually from inflation alone. Nationwide the figures are similar. Thus, in the United States, which spends \$45 billion annually on education,⁴² the additional costs involved in equalizing at a 50th percentile level amount to \$1.3 billion, an increase in outlay of less than 3%. Of course, if States choose to equalize at higher levels—that is, in Appellants' terms, decide to make high quality education available for all—the costs will increase. But even so, the increases required are not prohibitive. Thus, if Texas chooses to equalize at the 70th percentile, its increase in costs would be \$92 million (6.1%) and at the 90th percentile that increase would be \$263 million (17.5%). Similarly, nationwide, the cost if all States choose to equalize at the 70th percentile would increase by \$2.5 billion (6%) and at the 90th percentile by \$6 billion (15%).⁴³

While Amici do not submit that these are necessarily small figures, they do show that the order of magnitude of expenditures necessary to equalize our schools even at the level of the very best is not overwhelming and that to maintain a school system in which the overall quality is higher than the average now but which does not discriminate against poor districts need cost almost nothing more than we are presently paying.

⁴¹ 2 Staff Report, President's Commission on School Finance Reform, Review of Existing State School Finance Programs 15 (1972) [hereinafter cited as Staff Report].

⁴² President's Commission 11.

⁴³ Staff Report 15.

2. Appellants also contend that an equalized educational finance system would not reflect local variations in such things as the cost of educational facilities, the needs of disadvantaged or exceptional students for special facilities, the local tax burden for services other than education, and the like. In this connection, Appellants are particularly solicitous for the situation of the cities which, Appellants claim, will actually lose educational revenues under an equalized system.

Concededly, under the standard adopted by the court below, it is possible that a State could choose to adopt a system of public school finance that did not give weight to any of the above-specified variables. However, Amici, as Governors familiar with and active in the areas of school finance reform, believe that while such a result is conceivable, it is much more likely that any school financing system enacted to comply with the standard adopted by the court below will embody the type of sophisticated attempt to rationalize educational financing exemplified by the proposed California statute reproduced as Appendix B to the Brief Amicus Curiae of Richard M. Clowes, et al. In any event, the present Texas system takes into account none of the factors listed by Appellants, and it is difficult to see what legitimate State interest is furthered by perpetuating a demonstrably irrational system of school financing on the ground that its replacement, while of necessity a significant improvement, might not be ideal from some points of view.

3. Appellants also raise the spectre of a mass flight from the public schools by the children of those who already object to having their children attend school with blacks and other members of minority groups. (App. Br. 46-47; Montgomery County Brief 51). Not

only is it singularly unattractive to propose that this Court trade off wealth discrimination in exchange for eliminating racial discrimination,⁴⁴ but this contention is factually erroneous.

First, perpetuating discrimination against the poor in educational financing will hardly promote the use of the public schools to achieve "a society that is not divided by artificial barriers of race or class or wealth." (App. Br. 47). On the contrary, it is precisely the existence of school districts in which high property values, low tax rates and ample funding for public education coincide that is the principal cause of the creation of residential enclaves from which the black and the poor are excluded. Second, as the attempts to avoid desegregation have shown, the fact that persons who place their children in private schools are still taxed to support public schools operates as a substantial deterrent to "flight away from the public schools" by all but the richest.

In closing this section of their Brief, Amici would re-emphasize that the constitutional standard adopted by the court below—correctly in our view—does nothing more than require the State to stop using a system which discriminates against the children residing in poor districts. It does not require that the State util-

⁴⁴ This Court has heard similar arguments before. In *Monroe v. Board of Commissioners*, 391 U.S. 450 (1968), the defendant school district attempted to justify its operation of a free transfer system which resulted in the maintenance of segregated schools. This Court stated that:

We are frankly told that without the transfer option it is apprehended that white students will flee the school system altogether. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them. *Id.* at 459.

ize any particular means of financing. Rather, it sets forth the basic constitutional standard and quite properly leaves it to the State to make the policy decisions as to which of the many possible methods of school financing it will adopt.

Consistent with the decision of the lower court, there are many financing arrangements the State could adopt. The basic structures of some of these variations include:

1. A uniform formula, whereby the State grants each district the same amount per pupil;
2. "Power equalizing," whereby the State assures that each district receives equal funds for equal local tax effort;
3. Variation by cost of services, whereby the State pays more to those districts (generally urban ones) where costs are higher;
4. Combination formulae, whereby the State pays either a uniform amount under formula 1 or variable amounts under formula 3 and allows the districts additional leeway to spend more, for example, under formula 2.

The four types of formulae mentioned above are merely a few of those available. There are, in addition, many other factors that the State could consider in adopting a particular financing program. These include variations in educational need (such as programs for the handicapped), educational innovation and experimentation, and municipal overburden (that is, since urban areas are harder pressed to provide all the necessary municipal services than are rural areas, the urban areas

may require additional aid). None of the formulae suggested above, nor the variations thereon, are of great administrative difficulty and any of them could, based upon a State's policy decision as to how best to spend the funds available to it, form the basis of an adequate and constitutional school financing system.

CONCLUSION

The principal interest of Amici in filing this brief is to insure that this Court in the present case does not, in effect, endorse the existing defects in the financing of public education in the various States, including those governed by Amici. Amici believe, and the court below recognized, that the discrimination against poor children which results from such a system of school financing is in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and must be eliminated. Each Amicus herein is presently engaged in drafting and seeking the passage of legislation which would eliminate this discrimination against poor children. While constitutional law obviously cannot be made for the purpose of supporting legislative reform efforts, it is equally true that constitutional law should not thwart such efforts, particularly where, as in the present area of school financing, the absence of legislative reform is attributable to the entrenched political power of persons who most benefit from the inequalities of the status quo. As Amici have pointed out elsewhere in this Brief, the standard applied by the lower court allows many possible school financing systems, the details of which are properly to be filled in by the State according to its policy determinations. For the foregoing reasons,

Amici believe that the decision of the court below is correct and should be affirmed by this Court.

Respectfully submitted,

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August 21, 1972

APPENDIX

Table of State Provisions on Education and Other Services

	Educa- tion Consti- tution- ally Man- dated	Consti- tutional Recog- nition of Rela- tion of Educa- tion to Voting	Compul- sory Edu- cation Required by Statute	Other Services Consti- tutionally Man- dated	Other Services Men- tioned in Consti- tution
Alabama	Yes		Yes	No	Hospitals & Welfare
Alaska	Yes		Yes	No	No
Arizona	Yes		Yes	No	No
Arkansas	Yes	Yes	Yes	No	No
California	Yes	Yes	Yes	No	Welfare
Colorado	Yes		Yes	No	No
Connecticut	Yes		Yes	No	No
Delaware	Yes		Yes	No	No
Florida	Yes	Yes	Yes	No	Health
Georgia	Yes	Yes	Yes	No	Slum Clear- ance
Hawaii	Yes		Yes	No	Welfare & Slum Clear- ance
Idaho	Yes	Yes	Yes	No	No
Illinois	Yes	Yes	Yes	No	No
Indiana	Yes	Yes	Yes	No	Welfare
Iowa	Yes		Yes	No	No
Kansas	Yes		Yes	No	Welfare
Kentucky	Yes		Yes	No	No
Louisiana	Yes		Yes	No	Welfare
Maine	Yes	Yes	Yes	No	No
Maryland	Yes		Yes	No	No
Massachusetts	Yes	Yes	Yes	No	No

	Educa- tion Consti- tution- ally Man- dated	Consti- tutional Recog- nition of Rela- tion of Educa- tion to Voting	Compul- sory Edu- cation Required by Statute	Other Services Consti- tutionally Man- dated	Other Services Men- tioned in Constitu- tion
Michigan	Yes	Yes	Yes	No	No
Minnesota	Yes	Yes	Yes	No	No
Mississippi	No ^a		No ^c	No	Health
Missouri	Yes	Yes	Yes	No	Welfare
Montana	Yes		Yes	No	No
Nebraska	Yes		Yes	No	No
Nevada	Yes	Yes	Yes	No	Welfare
New Hampshire	Yes	Yes	Yes	No	No
New Jersey	Yes		Yes	No	No
New Mexico	Yes		Yes ^d	No	Welfare
New York	Yes		Yes	Welfare	Housing
N. Carolina	Yes	Yes	Yes	No	Welfare
N. Dakota	Yes	Yes	Yes	No	No
Ohio	Yes		Yes	No	No
Oklahoma	Yes		Yes ^d	No	Welfare
Oregon	Yes		Yes	No	No
Pennsylvania	Yes		Yes	No	Welfare
Rhode Island	Yes	Yes	Yes	No	No
S. Carolina	No ^b		Yes	No	No
S. Dakota	Yes	Yes	Yes	No	No
Tennessee	Yes	Yes	Yes	No	No
Texas	Yes	Yes	Yes	No	Welfare
Utah	Yes		Yes	No	No
Vermont	Yes		Yes	No	No
Virginia	Yes		Yes ^d	No	No

	Educa- tion Consti- tution- ally Man- dated	Consti- tutional Recog- nition of Rela- tion of Educa- tion to Voting	Compul- sory Edu- cation Required by Statute	Other Services Constitu- tionally Man- dated	Other Services Men- tioned in Constitu- tion
W. Virginia	Yes		Yes	No	No
Washington	Yes	Yes	Yes	No	No
Wisconsin	Yes		Yes	No	No
Wyoming	Yes		Yes	No	No

^a Education formerly mandatory, Constitution amended after *Brown v. Board of Education, supra*, to make provision of educational services within the legislature's discretion.

^b Education formerly mandatory, constitutional provision repealed after *Brown v. Board of Education, supra*.

^c School attendance formerly compulsory, statute repealed after *Brown v. Board of Education, supra*.

^d Constitutional provision.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1332

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, *et al.*,
Appellants,

v.

DEMETRIO P. RODRIGUEZ, *et al.*, *Appellees,*

ON APPEAL

FROM THE U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
BRIEF OF AMICI CURIAE IN SUPPORT OF APPELLANTS

INTERESTS OF AMICI CURIAE

Amici Curiae are representatives of State governments or political subdivisions in 30 States. Each such subdivision, like all American subdivisions, possesses systems of school financing inconsistent with the *Serrano-Rodriguez* doctrine. Each such subdivision, like all American subdivisions, has traditionally confided responsibility for the raising and allocation of public funds to its elected legislature. In consequence of the magnitude of the sums necessary to alter the system of school financing of each State and subdivision to conform to the *Rodriguez* doctrine, each of the undersigned States and subdivisions would suffer severe financial stringency and interference with its ordinary budget-making process and the democratic allocation of public resources within its borders.

The undersigned subdivisions have a common interest in resisting the imposition upon their fiscal choices in regard to taxing, spending, or the relation between them of the doctrine of judicial "strict scrutiny" which would be imposed upon educational and other spending decisions by plaintiffs and by the Court below. Each and all of the undersigned subdivisions rather favors the application to State taxing and spending decisions of those canons of restraint which have traditionally immunized such determinations, State and Federal, from intensive judicial review. They believe required application of the

standards which have traditionally governed judicial review of taxing and spending programs:

1. That "there need be no relation between the class of taxpayers and the purpose of the appropriation" (*New York Rapid Transit Company v. New York*, 303 U.S. 573 (1938)); "if the tax, qua tax, be good * * * and the purpose specified be one which would sustain a subsequent and separate appropriation made out of the general funds of the treasurer, neither is made invalid by being bound to the other in the same act of legislation." *Cincinnati Soap Company v. U.S.*, 301 U.S. 308 (1937), see *Carmichael v. Southern Coal Company*, 301 U.S. 495 (1937);

2. That the appropriate standard by which State tax legislation is to be judged is the standard of *Madden v. Kentucky* 309 U.S. 83 (1940): "In taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." 309 U.S. at 88 (1940);

3. That the appropriate standard for assessing State expenditure programs not involving racial distinctions peculiarly reached by the Fourteenth Amendment is that of *Dandridge v. Williams*, 397 U.S. 471, 487 (1970) with its stress on the proposition that "the Constitution does not empower this court to second guess State officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients," see *Steward Machine Company v. Davis*, 301 U.S. 548, 584-85 (1939); *Helvering v. Davis*, 301 U.S. 619, 644 (1939);

4. That in a Federal Nation with strong traditions of local government whose constitution recognizes rights in property, the existence of differences in the average wealth of political subdivisions does not constitute in itself State action activating any standard of constitutional review: "the use of taxes in the county where the tax property is located does not, of itself constitute an invidious discrimination or unreasonable classification" (*Board of Education of Independent School District of Muskogee v. Oklahoma*, 409 F.2d 665 (10th Cir. 1969)). Since States "have the attributes of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests" (*Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526 (1959)), constitutional guarantees reach only action by the State and not "the inaction implicit in the failure to enact corrective legislation." *Adickes v. Kress and Company*, 398 U.S. 144, 167, note 39 (1970).

The present case, more than any other case before the Court in the last decade, constitutes a threat to the autonomy and independent existence of State and local governments and indeed to the power of the purse of legislatures that is the enduring and perhaps the most important legacy of seven centuries of Anglo-American constitutional history.

Since the brief of Texas treats fully the questions surrounding the applicable standard of review, the present memorandum will sum-

marize the impact of the issues at stake in the present litigation upon the educational, social, revenue and expenditure policies of the signatory governments.

DANGERS OF A "FUNDAMENTAL INTEREST" HOLDING

If this court accepts plaintiffs' invitation to pronounce educational finance a "fundamental interest" activating a strict standard of review, a wide range of other governmental programs, each of which can be plausibly represented as involving fundamental interests, will be open to attack. The emotional arguments surrounding the distribution of medical care, for example, are at least as compelling as those surrounding education (1). Principles invoked with respect to elementary and secondary education can readily be extended to higher education in a society in which it is regarded as ever more essential (2). The application of the principles contended for here to sewerage and public health funds, police funds, funds for transportation, and library funds can be readily envisaged.

Judicial intervention in this sphere will almost certainly be productive of the "generation of litigation" phenomenon similar to that following the *Brown* desegregation decision, but without a foreseeable end. Thus former Commissioner Howe has noted:

There would be a long period of adjustment and difficulty. Seventeen years have passed since the Supreme Court handed down the *Brown* decision, and the schools are still in the process of desegregation.

(Howe, op. cit. p. 38, *infra*.)

The backbiting that has already taken place among the proponents of judicial intervention is sufficient to indicate the Pandora's box that will be opened if the courts are permitted to venture into this sphere.

Thus, the work, by Coons, Clune, and Sugarman, (3) the most important influence on the California decision, is filled with scornful references to the complaint in *McInnis v. Shapiro* with its demand for compensatory relief and is also filled with scornful references to the earlier work by Wise, "Rich Schools, Poor Schools," with its explicit demand for something closely approaching total state assumption of costs or equality in actual expenditure among districts. The Messrs. Coons, Clune, and Sugarman profess to prefer a system under which the State would act to provide each district with equal taxing resources but in which the level of educational spending within each district would in part be a function of the willingness of district voters to tax themselves. Under this regime the education received by each child would, it is said, continue to be a function of the political sentiments of his neighbors, though not necessarily of his own sentiments or those of his parents. It is easy to envisage the welter of law suits which will ensue if this Coons thesis is accepted—suits, for example, by Protestant school children aggrieved at the low level of public school taxation in predominantly Catholic cities, etc. The long term viability of the limitations proposed by Coons, Clune, and Sugarman upon a doctrine of absolute equality would indeed be in doubt. Indeed, Mr. Wise, repaying the "compliments" directed at him by Coons, Clune, and Sugarman, has pointed out that the California

Footnotes on p. 436.

decision does not clearly adopt the Coons-Clune-Sugarman rule. (Wise, *The California Doctrine*, *Saturday Review*, Nov. 20, 1971, p. 78.)

The Messrs. Coons, Clune, and Sugarman would leave some nominal scope for local autonomy by merely equalizing district taxing resources. Mr. Wise would equalize both taxing resources and taxing rates. He would not go so far, however, as to prohibit the use of distinctions based on child characteristics in the allocation of educational funds. Professor Michelman of Harvard likewise is an enemy of the Coons approach (see Michelman, *On Protecting the Poor Through the Fourteenth Amendment*, 83 *Harv. Law Rev.*, 7 at 54-59 (1970)). Alleging that the Coons approach could result in inequities while an approach requiring equal expenditures for a foundation program with some local variations upward presents problems of justiciability, he, as noted, goes on to favor "insistence on channelling all the State's educational expenditures into the common pool." (83 *Harvard Law Review* at 58.) Yet another legal commentator, Professor Kirp, not to be outdone, proclaims:

Stressing the effectiveness of equal educational opportunity does however suggest that the school is obliged to exert its energies in overcoming initial differences that stem from variations in background, in home life (or lack of home life) and community * * * Focusing on effective equalization—an equal chance for equal achievement—stresses the obligation of the state to make a greater financial effort in those school districts whose needs are greater because their school children are less well prepared for school. The State has a constitutional obligation to develop schools which will compensate as fully as possible for inequalities of prior training and background. The cost of such an effort, seriously undertaken, will be immense; the result will be well worth the cost.

(Kirp, *The Poor, The Schools and Equal Protection*, in *Harvard Educational Review*, *Equal Educational Opportunity* (1969) at 156, 169.)

Lest there be any doubt as to what this involves, Professor Kirp helpfully notes (footnote 122 of his article):

The Passow Report estimated the cost of compensatory education at "three or four times the cost of meeting the educational needs of the child whose home environment has already done a good portion of the job even before the child enters school"

(Passow, *Washington D. C. Public Schools*, p. 259.)

Professor Kirp does however provide one helpful suggestion. He notes:

The magnitude of the necessary effort may seem to some to represent an overreliance on schooling as a tool for social amelioration. While a court will not be able to choose among alternative social policies, (better schools or better housing or more jobs, etc.) it may, by denying plaintiff's claim, passively express its reluctance to order a major readjustment of fiscal and social priorities.

(At 169 n. 122.)

Lest it be thought that Professor Kirp's position is an extreme one, it should be noted that he too is outdone by Professor Samuel Bowles of Harvard. Professor Bowles sets forth the ideal of "equality of education opportunity in terms of the economic results of education" (Bowles, *Towards Equality of Educational Opportunity* in Harvard Review, *Equal Educational Opportunity* (1969) at 124). Professor Bowles goes on to urge:

The allocation of unequal amounts of resources for educating Negro as compared to White children and poor as compared to rich children.

(At 115).

It is clear that there are as many versions of what the Constitution requires as there are professors of law and education, and that the courts, if they admit a significant judicial role in this sphere, will be subjecting themselves to a barrage of conflicting law suits by exponents of conflicting theories. (4)

Counsel coordinating the *Serrano* litigation has made clear that the decisions are deemed of value not for the actual results obtained, which may indeed be counterproductive in terms of the needs of urban districts ("Unless we are careful, we can be locked into a formula we don't like for over a decade" (Myers, *Second Thoughts on the Serrano Case*, City Magazine, vol. 5, No. 6 p. 41 (Winter 1971) quoting Mrs. Sarah Carey, assistant director of the Lawyers' Committee)), but rather for their holdings that education is a fundamental interest. Mrs. Carey has noted:

And then finally—and this is an issue the press has ignored totally—if education is a fundamental interest, as the *Serrano* court declared it to be, what flows from that?

In the criminal area, where the right to an adequate defense, has been declared a fundamental right, the Supreme Court has held that the State has to put the defendant in a position where he can actually fully exercise that right. This has been translated to mean if he is poor he must be furnished defense counsel; his trial transcript must be paid for; and he must be given other support to put him in an equal position with more well-to-do citizens.

(Senator Mondale) As I understand Dr. Coons' interpretation of the *Serrano* case, the court specifically was not asked to deal with the question of what he calls "fiscal equity." So in no way does that deal with the need question. But there have been two cases, in Virginia and Illinois which sought to deal with the fairness principle, the need principle and both were lost.

(Mrs. Carey) I am getting at it from a different way. The *Serrano* decision did declare education to be a fundamental interest, and it said, as a result of that, we have to do certain things with the way we spend money for education, but there are a whole lot of things in different directions that flow from the finding of fundamental interest.

In other lawsuits which raise the point directly—which this case didn't—it may well be that you will find fundamental

interest interpreted as requiring whatever kinds of support a student needs to exercise that interest, the same way a criminal defendant may need counsel. The student may need transportation, he may need lunches, or special instructional aids.

(Senator Mondale) I understood Dr. Coons to say he hopes no one will bring a lawsuit of that kind now.

Did I understand you correctly?

(Dr. Coons) Yes sir.

(Mrs. Carey) Dr. Coons does not want to have *Serrano* fouled up on its way to the Supreme Court.

(Senator Mondale) That is going to be quite a conference in October.

(Mrs. Carey) *Ultimately, 5 or 10 years down the road, there will be cases that flow from the fundamental interest interpretation just as there have been in the voting rights and criminal defense areas.*"

(Senate Select Committee on Equal Educational Opportunity, 90th Congress, 2d Session. *Hearings* at p. 6868 (hereinafter cited as Mondale Committee Hearings) (emphasis added).)

It is evident that admitting a judicial role in this sphere will result in the crippling of essential governmental programs by a welter of conflicting legal commands. The existing system of multilevel grants in aid in many of its aspects makes effective budgeting difficult. When these difficulties are compounded by a number of conflicting decrees by State and Federal courts, hasty and emotional legislative responses, and all the other predictable consequences of the course being urged upon the court, it is by no means clear that the intended beneficiaries of the new rules will in fact benefit from them, or will benefit from them more rapidly than they would benefit from a process of public persuasion directed at the legislature. The recent experience in connection with welfare litigation in California, with its barrage of conflicting Federal and State injunctions, special sessions of the legislature, fund shortages and executive cutbacks may supply a vivid illustration of what is in store for our educational system under the regime urged upon the Court here. The consequences for school bond issues are also notorious. As noted by the court in *Spano v. Board of Education*, 328 N.Y.S.2d 229 (Sup. Ct., Westchester County, January 17, 1972):

Many contemplated school construction projects it was urged are in jeopardy as a result of the refusal of municipal bonding attorneys to render the necessary certification as to no pending litigation which would impair the validity of the bond issue . . . Unless and until the United States Supreme Court reverses or modifies *McInnis* and *Burruss*, I see no legal virtue championed or laudable judicial purpose served by placing the sword of Damocles over school bond financing in this State for the next several years.

Furthermore, there is no stopping place in plaintiffs' egalitarian logic which will be consistent with the survival of the right to private education. Indeed, as even commentators sympathetic to their cause have indicated, there is little stopping place in the logic as distinct from

Plaintiffs' intentions short of compulsory State operated boarding schools. (See Kirp, *The Poor, The Schools and Equal Protection*, in Harvard Educational Review, *Equal Educational Opportunity* (1969), at 155-56.) The principle that education should not be a function of parental wealth, articulated by the *Rodriguez* decision and in the very title of the Coons, Clune, and Sugarman book, is a politically debatable one on numerous grounds. It appears flatly inconsistent with the thrust of *Pierce v. Society of Sisters*. It would constitute constitutional compulsion of an "organic relationship of the citizen to the State" within the meaning of Justice Holmes' dissenting opinion in *Lochner v. New York*. But the maxim that "the child is not the creature of the State" evokes little sympathy from plaintiffs and their allies, some of whom have already declared their purpose to utilize the *Serrano* principle as a springboard further to constrict schools and the right to private education: Thus Dr. Coons:

(Senator Mondale) In the absence of some kind of adjustment in the rich district, would you not actually be encouraging private schools for the rich? Would they not say, "Well, we are in this trap where we can raise a lot of money to be sent elsewhere or we can put downward pressure on revenue for our local schools and simply spread all of our money on private schools for our children." Since all the capital costs of constructing private schools is deductible from the taxes anyway, it is sort of publicly supported . . .

(Dr. Coons) May I answer that other question which you had about the rich district and its disincentives? It is an important question. * * *

I think the amount that would already be taken out in personal income and other statewide taxes for the general support of education would be enough so that most people would not be able to afford both the support of public education and private education. At least there would not be a sufficient number of such people that there would be any but a fringe of districts in which the demography would be such that there would be so many very rich people that they would opt out of public education altogether. And, of course, it is up to the State as to whether they can do that. The State, after all, would set some kind of adequate minimum which every child should have available in public education. A district could simply drop out, as it were; it would have to stay in the system. Being in and paying for that system, people are going to use it—they are going to have to carry the burden of that local system, and so, there is a powerful incentive to stay in it and make it all work as a public system.

Was I responsive?

(Senator Mondale) Yes.

(Mondale Committee Hearings, pp. 6883-84) (emphasis added).

Mrs. Carey, the assistant director of the Lawyers' Committee sponsoring this litigation, went even further in outlining the possible attack on private schools:

(Mrs. Carey) On the private school issue, that is one that everyone kicks around. As a factual matter, I am not sure

there's any difference right now between the Scarsdale school system and Scarsdale with a private school system. It is just the admission practices that are slightly different. At present, it is a question of buying a house rather than getting into a school. So, I am not sure that will change things from the way they are at present.

Another thing to consider is whether, if private schools are actually set up as nonprofit corporations and so on, whether there would not be grounds for attacking them. There is a case, a Lawyers' Committee case in Mississippi, *Green v. Kennedy*, where white parents tried to set up a school, a private school, for the purpose of avoiding integration, and the court knocked down their tax exemption on the ground that it was a deliberate evasion of the constitutional mandate.

Now, if the Constitution declares education to be fundamental interest, it might be that you could attack private schools on that ground.

(Senator Mondale) The key to the *Green* case was deliberate segregation, white flight, designed to escape the court order.

(Mrs. Carey) That is right.

(Senator Mondale) *You might say there is a similar constitutional principle, and that no one can escape the public schools. Maybe that will be the law.*

Go ahead.

(Mrs. Carey) *That is roughly what I wanted to say.*

(Mondale Committee Hearings, p. 6884.) (Emphasis added.)

What plaintiffs seek to have the judiciary set aside is the operation in the sphere of education of the system of allocation of resources that in greater measure or less determines the distribution of every other commodity—this in a Nation whose constitution, including the Fourteenth Amendment to it, expressly recognizes and protects private property: "Absent constitutional mandate, the assurance of adequate housing and the definition of landlord-tenant relationships is a legislative not a judicial function. Nor should we forget that the Constitution expressly protects against confiscation of private property or the income therefrom." (*Lindsey v. Normet*, 405 U.S. 56, 74 (Feb. 22, 1972)). The plaintiffs totally fail to respond to the problem created for them by the continuing survival of the "State action" doctrine (see *Evans v. Abney*, 396 U.S. 435 (1970); *Adickes v. Kress and Company*, 398 U.S. 144, 167 note 39 (1970)). The State is not constitutionally obligated to eliminate the effects of differences in private means of individuals, let alone differences in average private means of the subdivisions in which individuals reside. These propositions would seem self-evident, but they are not in the constitutional wonderland inhabited by plaintiffs. As Dr. Harley Lutz, Professor of Public Finance at Princeton, has recently written:

It comes as quite a shock to be told that the property tax, workhorse of the tax system, is unconstitutional after so many years of reliable service. One can't help being suspicious of the circumstances—all the court decisions, in several States, have involved only school financing. The "rich" and "poor"

municipal units must levy different rates of property tax for the support of all other local functions, but apparently the disparities of tax rates for these purposes are still constitutional; moreover, every State provides more or less State aid to local schools. Without consideration of this fact, complaint about differences in property values and tax burdens is overdone. * * * Mother Nature is primarily responsible for the differences in real property values, and the contrivances of men have been aimed at manipulating municipal boundaries for maximum advantages. Topography, location and other natural features result in value differences that cannot be eliminated. A given millage levy will obviously produce more revenue for a governmental unit that contains high value property than it will for a unit that contains low value property. It would be as reasonable to hold that the Rocky Mountains are unconstitutional because they are not flat enough to plow as is to indict the property tax because a given rate of tax will not produce the same revenue in every district. * * * We may not have to wait long before some court will decide that a low income family is denied equal protection of the law because it can buy less than another family with more income. Inequality of personal income would then be unconstitutional.

(Lutz, *Can the Property Tax Be Replaced?*, Wall Street Journal, Feb. 9, 1972, p. 14.)

There is no reason to believe that the *Rodriguez* principle can be readily confined to educational expenditures or readily enforced. Already defendants have been informed that one "wealthy" (5) school district in a university community in a midwestern State where a *Rodriguez* suit has been filed has commenced guarding itself against an unfavorable decision by transferring various physical education, shop, and audiovisual activities from the school to the park board and library board. Of course, following transfer, they may not be within the scope of the compulsory education laws and hence arguably not within the scope of *Rodriguez*, notwithstanding that their noncompulsory character may mean that they will be availed of by fewer students from poorer homes. It is more probable, however, that if *Rodriguez* is accepted, the courts will feel bound, as they properly have in the school segregation cases, to pursue methods of evasion and to proliferate the *Rodriguez* principle to the point at which a corps of suitors (6) (or marshals) will relentlessly root out from local property-tax-supported budgets all activities which raise the danger that someone might be educated by them. Do the Federal courts really wish this role? Do they regard it as consistent with the maintenance of local or private initiative in a free country?

There is no reason to think that the judiciary, and particularly the lower Federal and State judiciary, will possess any significant competence in this sphere. Typically and regrettably, constitutional cases raising important public issues are briefed on close schedules by lawyers heretofore possessing limited familiarity with the subject matter. This is not self-evidently the best means of making available

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to a deciding tribunal pertinent information. Rather it is a method of making public policy that places a premium on sloganeering—sloganeering of the sort that captivated the California and Texas courts. In the end, it will set in motion forces that will lead to an increasing politicalization of the judiciary. Attention may properly be given to Justice Schaefer's recent warning:

It is true, I think that the style of legal argument and perhaps even the technique of legal research have shifted in recent years. This impression cannot be documented, but it seems to me that much more than in the past the lawyer's quest has become a search for quotable words which, regardless of their initial context, can be read in the abstract to bear upon the situation at hand. The pressure is thus toward a jurisprudence of words or phrases divorced from facts and capable of generating new words and phrases with independent lives.

(Schaefer, Book Review, 84 Harv. L. Rev. 1558, at 1559 (1971).)

The present case constitutes a repudiation of methods of persuasion in favor of recourse to authoritarian decrees whose sanction must rest if disputed, entirely on force. No processes of consent gave rise to the Texas decision. The judgment of no legislative body or constitutional convention supports its result. If the decrees of courts rendering such judgments are disputed, the courts will stand effectively alone. Indeed, the present case is brought against a background of years of almost complete public and political inactivity by the proponents of greater educational equalization. The columns of the largest newspapers of most States will be searched in vain for any significant effort during the last several sessions of their legislatures by the proponents of the present lawsuits to enlist public support of greater equalization. Although it may be true that the narrow felt interests of taxpayers in the wealthier subdivisions is not aided by equalization, almost all social progress is the product of enlightened self-interest or what Justice Holmes described as the limitations upon self-interest imposed by sympathy. Were this not the case, there would be no equalization programs at all, and, indeed, no public schools at all. But the designers of plaintiffs' theory elect to abjure public persuasion. Rather here the tyranny of the syllogism is resorted to in order to carry the day on the belief that it is easier to persuade one man, or five, than to persuade thousands. (7)

DESTRUCTION OF THE FISCAL POWERS OF AMERICAN LEGISLATURES

The proposition tendered by plaintiffs is of course totally at variance with numerous prior cases including those cited in the *McInnis* opinion as well as those cited in *Board of Education of Independent School District of Muskogee v. Oklahoma*, 409 F.2d 665 (10th Cir. 1969). The *Muskogee* case makes clear that "the use of taxes in the county where the tax property is located does not, of itself, constitute an invidious discrimination or unreasonable classification." The *Muskogee* case refers to the leading Supreme Court cases relating to constitutional limits on State taxation. In *Allied Stores of Ohio, Inc. v. Bowers*, 358

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U.S. 522, 526 (1959), the Supreme Court, rejecting equal protection challenges to State taxing systems, observed that States "have the attributes of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests." The cases are legion which reject any suggestion that there is a constitutional requirement of correlation between taxes and benefits, a constitutional prohibition against regressive taxation (such as the property tax, the sales tax, the value-added tax, or the total impact of State and local taxation generally), or a constitutional prohibition against regressive benefit programs. (Public colleges, national parks, mortgage interest tax deductions, etc); yet an opposite postulate as to all three of these issues is at the root of plaintiffs' complaint here.

The decided cases clearly indicate that there are virtually no constitutional limits on the distribution of State benefits by legislation. In *American Commuters Association v. Levitt*, 279 F. Supp. 40, 47 (S.D. N.Y. 1967), the court observed:

With respect to the challenged statutes conferring benefits, plaintiffs claim these statutes are unconstitutional because there is no equivalence between the taxes plaintiffs pay and the benefits they receive. This claim does not present a substantial constitutional question warranting consideration by a three judge court. * * * The controlling question as stated by the Supreme Court with respect to the constitutionality of a tax is whether the taxing authority has given anything for which it can ask a return. (*State of Wisconsin v. J. C. Penney Company*, 311 U.S. 435 (1940).) * * * Given the power to tax, the challenged statutes conferring benefits are not unconstitutional even if, as plaintiffs allege, the benefits they receive are not equivalent to the taxes they pay. (Cf. *Carmichael v. Southern Coal & Coke Company*, 301 U.S. 495, 521-25 (1937).) As the court stated in *Morton Salt Co. v. City of South Hutchinson*, 177 F.2d 889, 892 (10th Cir. 1949):

When * * * (a) tax is levied upon all the property for public use, such as schools, the support of the poor, for police and fire protection, for health and sanitation, for water works and the like, the tax need not, and in fact seldom does, bear a just relationship to the benefits received. Thus, the property of a corporation may be taxed for the support of public schools, asylums, hospitals, and innumerable public purposes, although it is impossible for it to derive any benefits other than privileges which come from living in an organized community.

The principles invoked by the district court were emphatically affirmed by the Court of Appeals in *American Commuters Association v. Levitt*, 405 F. 2d 1148 (2d Cir. 1969). In that case the Second Circuit made mention of the "special attention courts have always shown to tax matters even when constitutional rights are involved, e.g., *Nelson v. City of New York*, 352 U.S. 103 (1956)."

If plaintiffs attain their apparent desire, a fully State-funded system, the lot of the State administrators will not be a happy one. For the sponsors of the plaintiffs' suit have already made it clear that they consider that its principles extend beyond barring "discrimi-

nations" on the basis of district wealth and operate to bar discriminations in educational spending programs on any arbitrary basis, that is to say, any pattern of expenditure not resulting in per pupil equality. Thus Professor Coons has observed:

(Senator Mondale) So that if a school district found gold in the downtown area that permitted it to generate an additional \$500 in the same tax effort for their school children, that would come within the *Serrano* decision; but, if they had an influential Congressman that distributed the gold out of the Federal Treasury, does it apply?

(Dr. Coons) I am not sure. It seems to me that the "due process" clause of the Fifth Amendment might require a level of rationality in Federal spending which would make such a policy questionable. It would be a very interesting constitutional problem." (8)

(Mondale Committee Hearings, p. 6848.)

What became of most Federal public works programs on this theory, so inconsistent with our history and with generally understood limitations on the judicial function, is not explained by plaintiffs. For them, it is not sufficient that, as here, an elected representative legislature has apportioned burdens and expenditures; the courts are to be invited to second-guess budgetary determinations and to invalidate "regressive" taxes and expenditures and "unfair" relationships of tax and expenditure as they did in *Rodriguez*.

The thesis of *Rodriguez* is that some unconstitutional unfairness inheres in the fact that the residents of "rich" districts are taxed less heavily, for more educational benefits, than the residents of "poor" districts. But the case law is emphatic that the constitution imposes no requirement of a relationship between tax burdens and benefits. As stated by Mr. Justice Cardozo for the Supreme Court in *Carmichael v. Southern Coal Co.*, 301 U.S. 495:

We have recently stated the applicable doctrine. "But if the tax, qua tax, be good, as we hold it is, and the purpose specified be one which would sustain a subsequent and separate appropriation made out of the general funds of the Treasurer, neither is made invalid by being bound to the other in the same act of legislation." (*Cincinnati Soap Co. v. United States*, 301 U.S. 308, ante, 112, 57 S. Ct. 764, *supra*.) Nothing is more familiar in taxation than the imposition of a tax upon a class or upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the condition to be remedied.

A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes (see *Cincinnati Soap Co. v. United States*, 301 U.S. 308, ante, 112, 57 S. Ct. 764, *supra*). Any other view would preclude the levying of taxes

except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good. A corporation cannot object to the use of the taxes which it pays for the maintenance of schools because it has no children (*Thomas v. Gay*, 169 U.S. 264, 290, 42 L. ed. 740, 746, 18 S. Ct. 340). This Court has repudiated the suggestion, whenever made, that the Constitution requires the benefits derived from the expenditure of public moneys to be apportioned to the burdens of the taxpayer, or that he can resist the payment of the tax because it is not expended for purposes which are peculiarly beneficial to him (*Cincinnati Soap Co. v. United States*, *supra*; *Carley & Hamilton v. Snook*, *supra* (281 U.S. 72, 74 L. ed. 708, 50 S. Ct. 294, 68 A.L.R. 194); *Nashville, C. & St. L.R. Co. v. Wallace*, 288 U.S. 249, 268, 77 L. ed. 730, 738, 53 S. Ct. 345, 87 A.L.R. 1191. See *Uniform Refrigerator Transit Co. v. Kentucky*, 199 U.S. 194, 203, 50 L. ed. 150, 153, 26 S. Ct. 36, 4 Ann. Cas. 493 (301 U.S. at 522, 523)).

Justice Cardozo further pointed out, citing numerous illustrations.

Cigarette and tobacco taxes are earmarked, in some states, for school funds and education purposes * * * Chain store taxes are sometimes earmarked for school funds * * * license and pari-mutuel taxes in States authorizing horse racing are directed to fairs and agricultural purposes, to highway funds, and to an old age pension fund in Washington * * * Unemployment relief, though financed in most States by special bond issues, has in some instances been financed by gasoline taxes * * * Similarly, special taxing districts for the maintenance of roads or public improvements within the district have been sustained, without proof of the nature or amount of special benefits.

(Citing cases 301 U.S. at 522-23 nn. 14, 15.)

The havoc that will be wrought by the acceptance of the principles espoused by plaintiffs and the *Serrano* court is quite clear. The effect of acceptance of their claim would be to project the judiciary into a "second guessing" of government fiscal determinations unparalleled in our history. Virtually all existing spending programs, for education and otherwise, will be opened to attack.

Thus, the Federal Impacted Aid Program will be open to constitutional attack by the principle announced by plaintiffs, who reject the rational basis test presently used to sustain the program (see *Okaloosa Co. School Board v. Richardson* (N.D. Fla., Oct. 12, 1971)). (9) Indeed, the program is a major cause of the "inequalities" between school districts in many States. Dr. Coons himself has discussed the possibility of such an attack. "It seems to me that the due process clause of the Fifth Amendment might require a level of rationality in Federal spending which would make such a policy questionable. I would be delighted to be involved in that law suit." (Mondale Committee Hearings p. 6848). Even the Federal Title I Program, which uses negative wealth measures, may not be immune (see Coons, Clune, and

Sugarman, *A First Appraisal of Serrano*, 2 Yale Review of Law and Social Action 111, at 121 note 56 (1972)).

UNDESIRABLE EFFECTS ON THE TAX SYSTEM

One consequence of the *Rodriguez* rule may be to promote a shift away from property taxation toward other forms of taxation whether of a regressive or progressive character. The property tax is an unfashionable tax, but the reasons for its unpopularity are not necessarily to its discredit. "The property tax's high visibility is sometimes cited as if it were an objectionable feature. But this is a curious argument. Taxes ought to be visible, not concealed * * * what's more, although some homeowners seem not to connect clearly the property taxes they pay with the services those taxes finance, there is a much closer linkage between costs and benefits than at the State or Federal level" (Cordtz, *A Word for the Property Tax*, *Fortune*, May 1972 pp. 105-06).

A shift away from the property tax would have other consequences. One of them would be to confer a windfall upon industries effectively exempt for one reason or another from corporate income taxation:

One aspect of the local property tax, which is sometimes overlooked, is that it can, in effect, close up the loopholes in the Federal income tax laws. Consider coal. Coal royalties are accorded both capital gains treatment and depletion allowances. As a result of those two loopholes they are taxed on the Federal level at a very very minimal level. Thus, the local property taxes is really the only tax in existence now which at least has the potential for getting at the fantastic mineral wealth.

(Mondale Committee Hearings p. 6775, testimony of Ralph Nader.)

In addition, most economists are agreed that the imputed annual value of owner occupied land is at least conceptually income though not taxed as such under Federal and State income tax laws nor otherwise reached except by property taxation (see Marsh, *The Taxation of Imputed Income*, 58 Pol. Sci. Q. 514 (1943); Vickery, *Agenda for Progressive Taxation*, 18-26, 44-49 (1947); Simons, *Personal Income Taxation*, Ch. V (1938)). "The British income tax and those of some other countries, include the rental value of owner-occupied homes in taxable income" (Surrey and Warren, *Federal Income Taxation* 129 (1960 edition)).

Still other economists point out virtues of the property tax in promoting transferability of land:

Not only are the property tax's purported flaws exaggerated, but its virtues are too often slighted. Properly applied, it can help a free real estate market function in a way that maximizes the benefits to society. Economists generally agree that low property taxes encourage speculators to hold land off the market for appreciation, since the cost of holding the land is insignificant compared with the potential gains. There is evidence that this has already happened in the United States on an important scale. Between 1956 and 1966 according to studies made by Alan D. Manvel for the

National Commission on Urban Problems, land prices almost doubled—rising from \$270 billion to \$520 billion. The rate of increase was almost seven times that of the wholesale commodity price index. Yet the rise in the value of land was caused almost entirely by the growth in the economy (which increased the demand for an inelastic supply) and by society's investment in infrastructure and services. Realistic property taxation would compel the owners of undeveloped and underdeveloped property to pay a fair share of the costs of services from which their lands derived additional value. Large scale reductions in property taxes on the other hand would merely strengthen the forces that already tend to inflate land prices. The fantastic price of land in many European countries, where property taxation is minimal, shows the potential danger"

(Cordtz, *supra* at 106.)

These virtues of the property tax are not to be lightly despised. Certainly the decisions as to the value and fairness or lack of it of the property tax are decisions properly committed to State and local legislatures. Yet the present litigation constitutes a massive assault upon the property tax as it presently exists in the United States. The practical effect of adoption of the *Rodriguez* rule may be to require the States either to abandon the property tax for education or to provide for its state collection and assessment, an administrative task of gigantic proportions and one scarcely practicable in the near future in the many States which do not have State assessment agencies or State property taxes. The proponents of these suits do not deny these consequences, they acknowledge and seek to foster them:

The decision does not invalidate the property tax, but it requires that if that tax is to be retained, the distribution of the income generated by it must be reformed. This probably cannot be done unless the manner in which the tax is collected is also reformed.

(Mondale Committee Hearings at p. 6867; testimony of Sarah Carey.)

There is no reason why the property tax should be required to be a State tax or why the taxing authority should be required in the absence of a State property tax to coordinate assessments by thousands rather than merely dozens of assessors. It is not surprising that the reaction of academic students of public finance to the recent court cases has been something less than enthusiastic.

Moreover, in many States, shifts in the pattern of taxation away from property taxes will operate to the detriment of poorer families. Particularly is this so in those States which already have adopted high income taxes, such as Maryland, Wisconsin, and New York, to give three examples. By reason of the competition for industry these States are effectively precluded from significantly further increasing their income taxes in the absence of corresponding increases by neighboring States. They will be driven either to resort to State property taxes or to resort to State sales taxes which most economists agree are more regressive than the property tax. Some indication of

the choices which various States are likely to make if presented with the need for raising a large quantity of additional revenues for State funding of education may be gleaned from examination of the tables at p. 307-08 and 317-18 in Johns (editor), "Economic Factors Affecting the Financing of Education," National Educational Finance Project Volume II. These tables reveal that as of their dates, Wisconsin, by adopting the normal 5 percent sales tax rate and including consumer services at that rate, might derive an additional \$88 million in sales tax revenues whereas that State could gain nothing from adoption of the high Oregon income tax rates since it already has a high income tax. The State of New York would have gained \$1.15 billion from the 5 percent sales tax including consumer services, while it would have gained only \$98 million from raising its income tax to the Oregon rates. The State of Maryland would have gained \$165 million from raising its sales tax rates to 5 percent and including consumer services, it would have gained only \$54 million from raising its income tax to the Oregon levels. Given the practical exhaustion of these States' income tax bases it is not difficult to discern the direction in which they will turn if required to raise vast additional State sums for purpose of compliance with a *Serrano-Rodriguez* rule.

This potential regressive effect, of course, is not confined to the State level, as critics of proposals for value added taxes remind us (see Moynihan "Can Courts and Money Do It?" New York Times, Jan. 10, 1972, p. 24 E, "Who will provide this money is not clear: it could come from heavier taxes on the poor and the working class."; Kraft, "U.S. Is Taxing Itself Too Little and Wrongly" Baltimore Sun, Jan. 24, 1972, p. 11 A, "In the name of a handful of persons badly hurt by property taxes—particularly older people who could easily be helped in some other way—[the President] holds out for next year the promise of substituting for State property tax a general sales tax.")

It is clear from the authorities discussed that there is no assurance that either on the tax side or the benefit side a shift to a formula complying with *Rodriguez* will be of benefit to poor taxpayers or their children. In many jurisdictions, and perhaps in the Nation as a whole, the result may be a shift to more regressive sales taxes in the place of the present reliance upon property taxation. Similarly, distribution of school expenditures on a basis which gives property-rich areas less money may in many States operate to the detriment of persons of low income who reside in disproportionate measure in just such built-up property-rich areas. The assumption that shifts away from the property tax or shifts in expenditures away from property rich areas will have progressive effects has been vigorously disputed and the writers on public finance have been quick to point out that:

Any reduction in [property] tax rates would confer windfalls according to ownership—and property ownership is more concentrated than that of income. Who actually bears the burden of property taxation? Neither the theoretical analysis nor the empirical evidence is as clear as we should like. A part of the tax on commercial, utility, industrial and housing structures can be assumed to fall on consumers more or less in proportion to spending. This part then has some of the regressive element which is often cited in condemning the tax. But despite frequent implied assertions to the contrary,

a part probably remains on suppliers of capital; this will be more progressive than proportional (and not regressive). The considerable portion which falls on land, much of which was capitalized in the past, is hard to place in a meaningful sense—except to say that past and present land owners are generally “not poor”. The distribution of this burden will be decidedly more progressive than regressive. In short, although families with “low” incomes or consumption do bear property tax, persons who own, directly and indirectly, “large” amounts of property must carry burdens which are “heavy”.

(G. Lowell Harriss [Professor of Economics at Columbia University], *Issues and Interpretations*, 155 *The Bankers Magazine* No. 2 (1972).)

EFFECTIVE COMPULSION OF FULL STATE FUNDING

The *Rodriguez* decision at bottom is an effort to constitutionally impose a regime of full State funding of education upon the 49 American States that have historically rejected such a system and upon the State of Hawaii in which increasing dissatisfaction with its results has been manifested in recent years. It is true that for the moment proponents of the *Rodriguez* rule have urged that there are other methods of educational finance than full State funding, such as voucher systems and the Coons proposal of “power equalizing,” which are consistent with the *Rodriguez* rule (see, e.g., Lawyers’ Committee for Civil Rights, *Valid Systems under Serrano v. Priest, Compact*, vol. 6, no. 2 (April 1972) at 38). That these alleged alternatives to full State funding are “good for this day and train only” emerges quite clearly however from the writings of proponents of the new “movement”. Thus, in describing the possible use of voucher plans, even the Lawyers’ Committee suggests that “the system * * * be limited to an experiment in two or three urban areas” or be likewise limited to “after school educational experiences—e.g., music or art lessons.” (*Id.* at 41). It requires only a slight familiarity with the general view of State education authorities with respect to voucher plans to realize that they are scarcely a likely result of court imposed adoption of a *Rodriguez* rule. Thus, for example, the National Educational Finance Project in its extended volume on “Alternative Programs for Financing Education” (National Education Financing Project No. 5) dismisses the possible use of voucher plans in one footnote:

This so-called “voucher plan” was not considered because its constitutionality is in doubt at this writing. Furthermore, if the law prohibited the redeeming of the vouchers by parochial schools and also by private schools which enrolled a lower percent of blacks than the percent of blacks enrolled in public schools of the district in which the private school was located, there would probably be few advocates of the voucher plan.

(*Id.* at 350 note 3.)

The so-called power-equalizing option pursuant to which districts would be permitted to supplement the uniform State allocation by levying additional local taxes provided that the wealthier districts

levying such taxes turned over a large portion of the proceeds for statewide use similarly is not regarded as a viable alternative to full State funding by anyone. Even its chief and only sponsor, Professor Coons, has indicated that it is designed for consumption only by judges and not by educators or legislators:

Of course, there are certain problems inherent in that [power equalizing proposal], not the least of them the political problem of recapture from the local district. I am informed by people who know these things that it is politically difficult to establish a system in which, if Beverly Hills is to spend \$1,000 it may raise \$1,500. It is cosmetically bad politically.

(Mondale Committee Hearings, p. 6882.)

In the event that any State should be so foolhardy and intrepid after adoption of the *Rodriguez* rule as to adopt a power-equalizing rule as distinct from full State funding, the proponents of judicial intervention in these matters have already made clear what is in store for it. Thus, Professor Wise, the founder of the new cult, reads the California decision as prohibiting not merely existing systems of school finance but the Coons power-equalizing proposal also:

This analysis is consistent with the more equalitarian proposition that the quality of a child's education may not be a function of local wealth or how highly its neighbors value education. In other words, it would prohibit variations in the number of dollars spent on any child by virtue of his place of residence. * * * One point that remains unclear in the opinion is whether the equal protection clause applies to children or to school districts. If it is children who are entitled to equal protection, then the quality of a child's education could not be subject to a vote of his neighbors * * *.

(Wise, *The California Doctrine*, Saturday Review, Nov. 20, 1971, 78 at 82.)

Professor Karst has analyzed the California decision as in effect rejecting the power equalizing option, pointing out that Professor Coons had unsuccessfully sought a modification of the decision to expressly allow it (Karst, *Serrano v. Priest*, 60 Calif. L. Rev. 720, at 740, note 87 (1972)).

Professor Michelman likewise has assisted in sharpening the blades of the knives which will fall upon any State utilizing this supposed option, urging that the Coons approach involves unacceptable variations between children and districts and that any other approach allowing limited local variations presents problems of justiciability. (Michelman, *On Protecting the Poor Through the Fourteenth Amendment*, 83 Harvard Law Review 7 at 54-59). He is candid in favoring "insistence on channelling all the State's educational expenditures into the common pool." (*Id.* at 58.)

The President's Commission on School Finance has contributed its denunciation of power equalizing on the grounds that "it would be extremely difficult to establish an upper limit on district tax rates that would enable the State to plan its educational fund requirements. While the power equalizing would eliminate disparities based on

wealth, it would nevertheless continue vast differences in funding among school districts and therefore among children in the state." (President's Commission on School Finance, *Schools, People and Money* (1972) at 33) (10) The authors of the report of the Fleischmann Commission in New York State likewise rejected power equalizing.

We prefer full State funding to district power equalizing for several reasons. First, assume that wealthy districts are inhabited by wealth residents and poor districts are populated by the poor. All district power equalizing does then is to assure equity in tax rates vis-a-vis school expenditures. Poor people would have difficulty in meeting the competition of rich people in rich districts, once the latter saw how the finance plan was shaping up and raised their school tax rates to preserve their favored position.

Second, assume (as we do) that there is no absolute standard of education which can be described as "adequate"—that all educational disparities are relative. Then, if one is going to embark on a major revision of educational finance arrangements, why should one not remove "place" inequalities as well as wealth inequalities? The quality of a child's education should, in our view, be no more a function of how highly his neighbors value education than how wealthy they are.

Moreover, we believe that the equal protection clause of the Fourteenth Amendment applies to individual children rather than school districts. If this is so, then the quality of a child's education cannot depend any more on the vote of his neighbors within the confines of a local school district than it can on their aggregate relative wealth vis-a-vis other school districts within the State. The California Supreme Court in *Serrano v. Priest* was not explicit on this point, but it did take some pains to argue that territorial uniformity in school finance is constitutionally required. "Where fundamental rights or suspect classifications are at stake," the Court said, "a State's general freedom to discriminate on a geographical basis will be significantly curtailed by the equal protection clause."

To make the point clear, consider two districts, A and B, and let them be of equal wealth. Suppose the residents of district A choose a school program half as costly as the residents of district B. Is it good policy for the State to require the children of A to suffer the lifetime handicap of inferior education, which is to say, should the State exclude these children from the benefits of district B education on the basis of a district boundary line that is itself a historical accident? As we understand the ideals of a democracy, public institutions—and especially the schools—should see to it that personal attributes such as aptitude, talent, and energy, play a progressively larger role in an individual's success and development, while parental wealth, on the one hand, and apathy on the other, play a progressively smaller role. We see no way for this ideal to be achieved

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in the absence of direct State intervention in the allocation of educational resources.

One of the functions of an educational system is to act as a sorting device. Classification of people on grounds of ability and aptitude occurs all the time, and schools often act as a major transmitter of the process. But if primary schooling of some children is of vastly greater quality than that of other children, the sorting process is ineffective and dangerous. Local tastes for basic educational services should not distort the function of the sorting mechanism and possibly undermine students' potential and achievements.

(*Report of the New York State Commission on Quality, Costs, and Financing of Elementary and Secondary Education at 2.45 and 2.46.*)

Lest the critics of power equalizing have overlooked some of the considerations which would be urged against it in future litigation, Professor Coons himself has supplied some further suggestions:

The first group notes that tax-sensitive voters may tend to cluster (*e.g.*, older persons with fixed incomes and no children). These critics would prefer the security of a state-mandated uniformity of spending which, as they view it, would be more education-oriented and less arbitrary. * * * The second group of critics raises a more technical objection to local choice. They doubt whether it is possible to establish fiscal neutrality or know when it exists. Realistically there are many subtle forms of wealth difference in addition to differences in the value of taxable property per pupil; to equalize assessed valuation per pupil does not necessarily equalize fiscal capacity. If in a decentralized ("power equalized") district system differences in spending exist, and if for example, spending is higher in districts with higher personal incomes, how would an objective observer determine whether taste, wealth, or some other factor is responsible?

(Coons, Clune, and Sugarman, *A First Appraisal of Serrano*, 2 *Yale Review of Law and Social Action*, 111 at 117 (1971).)

These quotations should be sufficient to make clear that what is at issue in this case is whether this court is going to impose upon the States full State funding as a matter of constitutional compulsion. Notwithstanding the protestations about the alleged availability of voucher systems and power equalizing, a decision by this court affirming *Rodriguez* will clearly have the practical effect of imposing full State funding upon every American State. The alleged options remaining open to the States are not viable and are not intended to be so.

Against this background the appropriate disposition of this case is apparent in light of what all nine members of this court have recently stated in respect to the importance of local control of school systems:

A more weighty consideration put forth by Emporia is its lack of formal control over the school system under the terms of its contract with the county. * * * Direct control over decisions vitally affecting the education of one child is a need that is strongly felt in our society. * * *

(*Wright v. Council of City of Emporia*, 40 L.W. 4807, 4812; opinion of Stewart, Douglas, Brennan, White, and Marshall, J.J.)

Local control not only vital to continued public support of the schools, but it is of overriding importance from an educational standpoint as well.

(*Wright v. Council of City of Emporia*, 40 L.W. at 4815; opinion of Burger, Blackmun, Powell and Rehnquist, J.J.).

Indeed, it is clear that the major objective of many of the proponents of the present litigation is the obliteration of local control; see, *e.g.*, Zuketsky, *Taxes and Schools*, *The New Republic*, June 17, 1972, pp. 20, 21, where it is observed:

One cannot reform school financing in ways that meet the tests courts have adopted without striking directly at the problem the integration cases approach obliquely; the power of local school boards to make decisions that influence what takes place in classroom and school. The power of local boards to determine what children go to which school, what teachers are hired, where they teach and how much they are paid, where schools are built and buses run are facets of district power; so is the power of boards to tax, incur debt, make budgets for distributing local and State revenues, contract for personnel and services. Integrationists are attacking the district from the front as a fortress of power and privilege, and fiscal reformers from the rear, but both are headed for the same strong room.

IMPAIRMENT OF LOCAL CONTROL

There are profound implications for the control of the public schools in the results sought. The need to secure citizens' support for local schools in order to secure support for local property tax increases will be eliminated. The need for involvement of school superintendents in the politics of the community and the desires of its citizens will be in large measure eliminated. The power of the purse of the local legislative body will be eliminated. (11) The implications for control of the school system and of the curriculum are recognized by virtually all the commentators on this subject. The most obvious and immediate shift is a shift in the responsibility for labor negotiations with teachers' unions, which will naturally be directed at the level of government which provides the revenue—the State government under the mode of educational finance favored by plaintiffs. There are longer term shifts also. Acceptance of the principle contended for presages a shift in control from the district and county to the State and perhaps ultimately to the Nation. The extent to which such a shift is desirable and the degree to which it is desirable raise questions of the highest political moment, which under a democratic system of government cannot be placed beyond legislative and popular control. The implications have been spelled out by Professor James Coleman:

There are two very different conceptions of the relation of schools to the social order. One conception is that of schools

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as agents for the transmission of knowledge, culture and social norms of and thus as agents for the maintenance of the social order. The other conception is that of schools as crucial institutions of social change. Schools have performed both of these functions in the past and will continue to do so in the future. But the relative emphasis of the two functions has been different at different times and places and what is of interest to us here is different for local authorities and national organizations including national governments. As the discussion of differential opportunity indicated, local authorities ordinarily have more interest in stability and use of the school as a means of maintaining a social order than do national governments.

Thus, again on the issue of social change, national governments are more often on one side, the side of change, and local authorities are more often on the other, the side of stability. The basic interests involved have been discussed in earlier sections; but the content of these issues of change versus stability goes beyond the questions discussed earlier. Examples will indicate how this is so. In Hitler's Germany, in Stalin's Russia, in Mao's China and in Castro's Cuba the schools have been used extensively by national governments as instruments of change. Modern totalitarian regimes following a coup or revolution move quickly to take control of the schools, in order to indoctrinate the new generation with the ideology of the regime. This is an important device enabling such regimes to consolidate their power and break the influence of the preceding generation upon the younger one. The use of boarding schools, the development of nationalistic youth groups in the schools, the introduction of nationalistic propaganda into the curriculum, the indoctrination of teachers and the purging of teachers are methods that these regimes have used to achieve, in a single generation, radical social change. Such attempts at change meet with increasing resistance at lower levels of social organization, all the way down to the family. What is true in totalitarian regimes is true, to a lesser degree, in democratic ones: The national government is more likely to see the schools as instruments of social change than is the local government. The local-national conflicts concerning school integration in the United States illustrate this well, because the national government, pressed by organizations at the national level, attempts to use the schools to create racial integration which is absent in other aspects of life and thus to bring about a major transformation of the social structure. What is evident in this type of conflict is, in a sense, the self-preservation interests of two social units, the nation and the community.

(Coleman, *The Struggle for Control of Education*, in Bowers (Editor), *Education and Social Policy: Local Control of Education*, 64, at 77-78 (1970).)

In addition to these broader consequences which may flow from increased centralization of control, there are more immediate reasons for questioning centralization. Thus, the former Commissioner of

Education, Harold Howe, though sympathetic to the California decision, in commenting upon it has written:

Teachers' organizations have opposed decentralization of city schools because of the potential loss in leverage in dealing with multiple education authorities over a variety of issues, and they may welcome centralization of fiscal authority at the State level for corresponding reasons * * * Finally, the California decision raises questions of diversity and control. It is an axiom of American politics that control and power follow money. As schools finance is monopolized by the State, what would States be likely to do that they are not doing now in controlling the education options of school boards? They might move to complete standardization of education, decreeing what is to be studied, for how long, and in what manner, thereby adding to the already extensive requirements for teacher certification and similar matters. While there are abuses in any system, I believe strongly that we need less, rather than more, participation by the state in the day to day affairs of the schools.

Howe, *Anatomy of a Revolution*, Saturday Review, Nov. 20, 1971, 84, 88. Thus too, Professor James Coleman, perhaps the leading authority on these matters, is led by concern for diversity and local control to advocacy of a voucher system with public control limited to control over ethnic and social class composition of student bodies. See Coleman, Preface to Coons, et al., *supra*; Coleman, *The Struggle for Control of the Schools*, in Bowers (ed.) *Education and Social Policy: Local Control of Education* (1970); and the essay by Coleman in Harvard Education Review, *Equal Educational Opportunity* (1969).

Dr. James Conant, though a recent convert to the desirability of full state funding, pertinently observed some years ago:

Four generalizations are possible about the financing of our public schools. First, in every State the funds for the support of the local system come in part from local real estate and in part from taxes levied by the State itself. Second, in no State is the amount of money now available adequate in every community of the State. Third, to find a satisfactory formula according to which State funds may flow to school districts on an equitable basis to supplement the local financial provisions has taxed the skill and ingenuity of lawyers, legislators, and economists to the very limit. Fourth, the need for a formula comes from the fact that the real estate base for local taxes has, by in large, proved totally inadequate. There probably is no one completely satisfactory scheme. For the State to take over entirely the financing of each school district would be, of course, to move far in the direction of a system of state schools. *Unless a local community, through its school board, has some control over the purse, there can be little real feeling in the community that its schools are in fact local schools. I have heard the opinion expressed by those who have devoted much study to the matter that something like 50 percent of the current expenditures should be raised through local taxes if local control is to predominate.*

(Conant, *The Child, The Parent, and The State* (1959) at 26; emphasis added.)

In discussing Federal equalization aid, Conant recognized that any large scale program of equalization assistance would result in a large and increasing measure of Federal control, an insight which applies equally at the State level. Conant observed:

To imagine that recurring appropriations of this magnitude can be made without careful budgeting on the part of the Administration seems to me to be the equivalent of imagining completely irresponsible government. Careful budgeting will mean, in turn, a strong Executive Agency which must have access to a mass of factual information about the educational situation in every State. The agency responsible for submitting the annual estimate to the Bureau of the Budget and then supporting the proposals before Congress will have no easy task. Proponents of a flat grant and various equalization formulas will have to argue their cases from time to time, if not each year. The education committees of the House and Senate will have every reason to examine into details of curricula and school organization, much as committees of the State legislatures now do from time to time. Certainly a new chapter in American public education will have opened. It would not be accurate to describe the resulting situation as Federal control of our public schools, but we should certainly have a powerful Federal influence added to the present influence of the central authority in each State.

(Conant, *supra*, at 55-56.)

The fact that increased State financing inevitably means increased State control has long been recognized by students of State-local tax structures. As early as 1931 it was noted in Hutchinson, *State-Administered Locally-Shared Taxes* (1931) that:

This study of State-administered locally-shared taxes indicates, however, that State administration of taxation is the first step toward State control of the functions supported by these taxes. The State is increasing its control of local functions by minimum requirements. In the case of roads it may require that the road be built to satisfy the State Highway Commission. Minimum educational standards in the way of teachers per student and the length of the school year are often prescribed. As the amount of revenue return grows larger the restrictions placed on the localities increase in number and rigor.

(At p. 21.)

The Hutchinson study recognizes the extent to which State control usually follows State subventions. Hutchinson quotes Sidney Webb's history of grants in aid in England, Webb, *Grants in Aid: A Criticism and a Proposal* (1920) (at p. 6) (Hutchinson at 122):

The [British] National Government in the course of the three-quarters of a century from 1832, successively "bought" the rights of inspection, audit, supervision, initiative,

criticism, and control, in respect of one local service after another and of one kind of local governing body after another, by the grant of annual subventions from the National Exchequer in aid of the local finances, and therefore, in relief of the local rate payer.

In summarizing the history of locally shared taxes Hutchinson observes:

Usually, however, the State administered taxes replace some source of taxation taken from the locality. Further, the method lends itself to more and more State supervision, through reapportionment of the revenue according to the State's idea of need and through the establishment of minimum standards for the function of which the money is given. It is a movement to be watched, and studied, for the number of taxes so administered and returned is increasing. The State sees the local need and is giving its assistance, but with this assistance goes interference. This particular type of State interference will be questioned by believers in home rule, for it usually involves rigid legislative interference rather than flexible administrative control.

(At 131-32.)

Further, because of variations in local needs, courts will not be able, absent detailed meddling in the day to day operations of school systems, to be able to enforce any rule of equality, even the simplest. Thus, former Commissioner of Education Howe has pointed out:

Educational costs vary considerably within a state. The cost of living in upstate New York is about 10 percent less than in New York City, so that teachers' salaries, a major component in any system's expenses, must be higher in the city in order to be fair. Janitorial services, repair services, construction, and the like vary from place to place. Vocational education, because of the high cost of equipment, and the teaching of handicapped children are exceptionally expensive. Spending exactly the same amount on each child in a State therefore, does not provide equality of services.

(Howe, *supra* at 86.)

Any rule of equality, whether relating to per pupil expenditures, school facilities, or allocation of taxing resources, would force State school systems into a Procrustean bed.

It is, of course, not self-evident that in an age of increasingly complex problems complete educational leveling is either desirable or possible. Indeed Professor Coleman in his preface to the work by Coons has noted that the American system of local financing in education is in effect a substitute for the English and European systems.

The educational systems of Europe have traditionally exhibited these dual forces through dual public school systems: academically oriented set of secondary schools for an elite and a set of schools terminating early for the masses. Another outcome of these forces has been the educational system of England: The State supported schools were added in 1870 to a system of "voluntary" or privately supported schools. Thus

the family with some financial means could satisfy both its aims by supporting the state system through taxes, providing one level of education, and sending its own children to private schools, providing a higher level for them. In the United States, a dual system never developed within public education, nor has the use of private schools been widespread *** It would appear, then, that the second of these forces, the desire of families to provide for their own children the best education they can afford, has been wholly submerged by the goal of educational opportunity for all children or at least it has been implemented wholly through actions which achieve this latter goal. This appearance, however, is quite misleading. In the United States, another means has arisen whereby persons with financial resources can employ them to their own children's benefit without having them spread thin over everyone else's children as well. This means is place of residence together with local financing in education.

(Coleman, preface to Coons, at VII-VIII.)

Professor Wise and Professor Coleman recognize the profound political implications of the claim for greater constitutionally compelled equality in school financing. In writing of the Coons theses, Professor Coleman has observed:

Obviously, the application of this principle to all areas of consumption would do away in effect with income differences, destroying the whole system of incentives on which every society is founded.

(Coleman, preface to Coons at XIV. (12).)

Professor Coleman goes on to note that inputs of financial resources are only one of several components of the educational experience in a school, and that a more significant component of that experience is the class background of the other students:

There is, of course, a broader sense of the terms "equality of educational opportunity" which should be kept in mind; equality of all the effective resource inputs into education, not merely the financial ones. This equality can only be measured by equal effects for children of equal ability; but it clearly consists of a variety of input resources, not merely financial ones. The question about the State's provision of equal education opportunity becomes a difficult one: over which of these resources does the state have control, or should the State have control? Which of the resources can the State, through legal means, demand be redistributed equally? Certainly not the attentive help which some parents give their children in learning to read, nor the discipline some parents exert in enforcing the homework assignments of the school, nor the reinforcements by parents of the performance rewards given by the school. . . . In this second area of resources (the State) has been even more ineffective than in its attempt to redistribute financial resources. This second kind of educational resource, in the

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form of other children in a school, Coons and his colleagues do not discuss. Yet the attempt of the State to effect a redistribution focuses on the attention of the fact that financial resources are not the only ones. More fundamentally, it raises the question of just how far the State can go, and how far it should go, in redistributing educational resources to provide equal protection to the young in the form of equal educational opportunity.

(Coleman, preface to Coons at XV-XVI.)

In light of this, it should be entirely clear that this case at bottom involves questions not merely of educational finance but of political theory: of whether the State is to be viewed as an organic unity, and its citizens merely as components of an organic whole, a view common to most totalitarian systems and one consistent with the thesis that the State is fully responsible for all differences among its citizens, or whether rather the authority of the State is to be viewed as resting upon some form of social contract and is hence limited in its operation upon individual differences to those powers conferred and stemming from actions taken by elected constitutional conventions and legislatures.

It need scarcely be labored that the removal of fiscal controls to the State level has consequences for the survival of local government. It has not hitherto, in this country, been thought unconstitutional for taxes raised by a given government to be spent without reduction by the sort of excise tax on educational expenditures which plaintiffs would have this court impose on "wealthy" districts. Nor, under modern concepts of government, is it unconstitutional for one level of government to delegate powers to another, even though the result of a delegation would be to produce distinctions between the actions taken by delegates which the delegating government itself would be powerless to adopt. (13) The whole purpose of delegation of power is to allow the delegates to do what the delegating power could not do. It does not follow from the fact that the State has arguably created its municipal corporations, (14) that absent racial gerrymandering of other racial discrimination it is chargeable with the consequences of their differing actions, as the plaintiffs would have it.

It has been pointedly observed that:

One purpose for which many Americans will make sacrifices, for which they will subject themselves to heavy taxes, is to pay for schools for their children. Will voters do as much to finance more education if there is less of a tie to their own children? Some may, some may not.

As voters are pressed for tax dollars now, some may be reluctant to shoulder heavier burdens to pay State or national taxes for schools elsewhere. Over the years, I suspect, a significant local identification (1) of prospective benefits (2) with payment obligations, can have positive results as regards taxes designed to finance better quality.

What value system leads people to sacrifice for the welfare of children? As long as scarcity bears upon Americans as it must, even those with the best of good intentions are compelled to curb the desire to be generous.

A "foundation" level of school spending guaranteed by state finances will elicit strong support. But it will not do as much as some people wish and are able to pay for. If free to do so, some communities will exceed the general average. The country will benefit from this local freedom. The results of better schooling do extend beyond the area that pays the excess. People move. Positive "spillovers" are no less real than the negative ones which are cited convincingly as a reason for taxing over a wide area to pay for a (rising) level of schooling for all.

Many an American in the upper middle-income group is troubled by present taxes. He or she can pay still more. In many cases, more or less willingly, Americans will reduce personal consumption and saving to pay more to government. They are more likely to do so, I suggest, the more they expect their children to benefit.

Some groups supporting the court cases argue that if people in community A want to pay, say, \$2 more for the education of their own children they will also have to pay \$2 more for children in other parts of the State. Does this seem fair? How would it affect incentives? Is one too unrealistic and and old fashioned to believe that effort and thrift make a difference and are not unaffected by the prospects of rewards? What would be unfortunate is a condition in which the people who can pay for better education, who must be willing to support heavier taxes, will oppose because too much of additional amounts seem likely to go to "others".

For the best results in financing education, a local element may need to be larger than seems consistent with the new court decisions.

(Harriss, *supra*.)

Finally, it is important to note that the proponents of the *Rodriguez* rule do not expect it to secure the assent or even acquiescence of the public on its merits. They recognize that, given a free choice, the overwhelming majority of districts clustering near the median in wealth are likely to prefer local fiscal control to full State funding. The acquiescence of these districts and their residents in plaintiffs' designs for full State funding is sought to be secured by a process of blackmail:

A primary factor will be the self-interest of the bulk of school districts that cluster near the median in wealth. They can expect benefits from successful reform; what they can expect from unsuccessful reform is trouble. This makes them the staunch ally of the court. What such districts do not want is a prolonged period of turmoil and doubt in which aid formulas, validity of tax impositions, validity of bonds, and retroactivity remain locked in a political struggle. The self-interest of these near-median-wealth districts lies in certainty, and they will be prepared to accept any reasonable legislative package that produces it.

(Coons, et al., 2 Yale Review of Law and Social Action at 118.)

All of this is sought to be imposed in the face of the acknowledgment, by the architects of plaintiffs' theory, that:

Of all public functions, education in its goals and methods is least understood and most in need of local variety, experimentation, and independence.

(Coons, et al., 2 Yale Review of Law and Social Action at 119.)

ENFORCED MEDIOCRITY AND REDUCTION OF PUBLIC SPENDING ON EDUCATION

Virtually all commentators on these problems agree that one effect of the *Rodriguez* rule would be to limit educational expenditures in the wealthier districts and to limit society's total investment in education, its reliance upon the public schools, and political support for increased educational appropriations at the State level. The nub of the matter is found in the observation of Professor Coleman (Preface to Coons, Clune, and Sugarman, *Private Wealth and Public Education*):

The history of education since the industrial revolution shows a continual struggle between two forces: the desire by members of society to have educational opportunity for all children and the desire of each family to provide the best education it can afford for its own children. Neither of these desires is to be despised; they both lead to investment by the older generation in the younger.

The experiences of the two leading jurisdictions which have adopted a system of full State funding is not such as to encourage a belief that statewide uniformity and maximization of total educational effort are consistent. In May of 1971, the Advisory Commission on Inter-Governmental Relations conducted a conference on State financing of public schools. At that conference, it was addressed by Professor P. J. H. Malmberg of the University of New Brunswick who served as director of curriculum and research in the provincial department of education from 1962 to 1969, during the period of the implementation of provincial assumption of all school costs. Portions of his remarks have been summarized as follows:

School districts which acted as innovators in curriculum prior to 1967 now are not able to do so. These districts usually spent a greater per-pupil amount on instructional development than other districts. Instructional funds are now distributed by the province on the same per-pupil basis to all school districts and they, plus economies, are minimal. The result is that in the "lighthouse" districts there has been curriculum stagnation. The effects of Equal Opportunity on curriculum have been more a "leveling down" than an "evening up".

Later, in answer to a question, Mr. Malmberg said that he felt there had been some "leveling up"—better teachers, buildings and programs—in the rural and poorer urban districts during the first 2 or 3 years of Equal Opportunity.

Now, I think we are beginning to lose the dynamic and there is going to be a "leveling down", he added. * * *

* * * "It is no secret", he said, "that when school boards lost their fiscal independence in 1967 they felt that they had lost their manhood, for this independence to most school boards represented local control of education. The most significant decision making function that they lost is control of raising money and determining how to spend it in education. It is my impression that it has been more difficult to get good people to serve on school boards since the advent of Equal Opportunity and that school boards have not taken their duties as seriously as they did previously. To retain local interest in schools, it is essential to have a large measure of local control. This is a challenge New Brunswick now faces."

(Advisory Commission on Inter-Governmental Relations, *Who Should Pay for Public Schools* (1971) at 12-13.)

A similar lack of enchantment with full State funding appears to have set in in Hawaii. There full State funding was an inheritance from territorial government. After experience under this program, the Hawaiian Legislature by Act 38 of the Regular Session of 1968 (now codified as Hawaii Revised Statutes Section 27.1) adopted an act restoring to the counties the power to supplement State funds for school construction and transportation. The act in question was "declared to be an urgency measure deemed necessary in the public interest" by its preamble. The preamble went on to recite:

Under existing law, counties are precluded from doing anything in this area, even to spend their own funds if they so desire. This corrective legislation is urgently needed in order to allow counties to go above and beyond the state's standards and provide educational facilities as good as the people of the counties want and are willing to pay for. Allowing local communities to go above and beyond established minimums to provide for their people encourages the best features of democratic government.

Dissatisfaction with the consequences of full State funding in Hawaii has not been confined to its legislature. (15) The Supreme Court of Hawaii in its opinion in *Spears v. Honda*, 51 Hawaii 1, 7 (1968), a case invalidating a program providing bus transportation for private and parochial school students, alluded to the uniquely significant position of private schools in Hawaii which had survived throughout the present century and went on to refer to the "stinginess" of the Hawaiian Legislature with respect to appropriations for public schools and to the universal mediocrity of Hawaiian public schools under the full State funding system:

The gap in the quality of education provided by public schools and the quality of education provided by private schools is still reflected today in the ratings given to the various high schools in the State by the Accrediting Commission for Secondary Schools of the Western Association of High

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Schools and Colleges. About 44 percent of the nonpublic high schools received the highest rating possible while none of the public high schools received such rating.

One consequence of the imposition of ceilings upon expenditures in the "wealthier" districts would be a tendency of residents of these districts to resort in greater measure to private schools. This phenomenon has been noted in the aftermath of the abolition of the District of Columbia Track System in *Hobson v. Hansen*, and was pointed to as a probable consequence of the relief sought by the court in *McInnis v. Shapiro*, 293 F. Supp. 327 (N.D. Ill. 1968) at notes 37-38. See also Kurland, *Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined*, 35 U. Chi. L. Rev. 583, 595 (1968). In response to this very real possibility Professor Coons and his colleagues have tendered two answers. Their first suggestion is that exercise of the right to private education should be further burdened; in Dr. Coons' words "of course, it is up to the State as to whether they can do that." (Mondale Committee Hearings, pp. 6883-84.) See also Coons, Clune, and Sugarman, *Private Wealth and Public Education* at 277-78; Mondale Committee Hearings at p. 6884; testimony of Mrs. Sarah Carey. It is in addition suggested by Professor Coons and his colleagues that "further, it seems appropriate for the court to view the class 'children' as simply a subgroup of the class 'poor'. Realistically, all children are poor * * * such separation of the interests of child and parent could be enormously significant in future encounters among pupils parents and the state on issues ranging from compulsory education to school finance." (Coons, Clune, and Sugarman, *A First Appraisal of Serrano*, 2 Yale Review of Law and Social Action 111, 115 (1972).) It may be that this Court's recent opinion in the *Yoder* case has somewhat dampened the enthusiasm for this line of argument. The second answer of Professor Coons and his colleagues with respect to the possibility of flight to private schools, is the perhaps somewhat cavalier observation "if these families desert public education it is hard to see that much is lost." (*Id.* at 118.) The difficulty with this attitude is that much of the present political support for State as well as local education programs emanates from the "wealthy" suburban constituencies in which the flight to private education may well take place.

Imposing a rule requiring full State funding would be to decree that no new educational program could be embarked upon until it attained majority support in the State as a whole. It is part of the genius of our Federal system that no such stultifying barrier to progress or greater expenditure is imposed upon the lower levels of government. The existence of national programs commanding majority support in the nation is not held to preclude the existence of State programs commanding statewide majorities but unacceptable to a national majority. Similarly, the existence of statewide programs commanding statewide majorities is not viewed as inconsistent with the survival of local programs commanding majorities in particular localities but not in the State as a whole and, indeed, the lack of majority support at any level of government for a public program does not under our system preclude individual private expenditures for social desiderata not publicly recognized. Surely this feature of our system of government has been

conducive to progress. Many educational innovations now accepted by State majorities including special education for handicapped pupils, kindergarten programs, school breakfast programs and the like were pioneered in "wealthy" local school districts. While plaintiffs profess to seek a decree which would allow local districts to raise added funds by taxing themselves more heavily and turning over a large portion of the added proceeds to other districts, the authors of their scheme recognize that in practice full State funding or fully State controlled funding will be the result of the relief sought. The obliteration of the local level of discretion is effectively demanded by plaintiffs' complaint; its sponsor have made plain that campaigns against private and State discretion will shortly follow. Wholly apart from the inconsistency of this design with a constitution which breathes from every pore of its language hostility toward an overly strong national government, can it be supposed that this program is the way to maximize public expenditures on education?

As the somewhat incredulous court in *McInnis v. Shapiro*, 239 F. Supp. 327, 331 n. 11 (N.D. Ill. 1968) observed when first confronted with claims similar to those urged by plaintiffs here:

Surely, quality education for all is more desirable than uniform, mediocre instruction. Certainly, parents who cherish education are constitutionally allowed to spend more money on their children's schools, be it private instruction or higher tax rates, than those who do not value education so highly.

That the end result of a *Rodriguez* rule, and the regime of full State funding enforced by it will be a reduction in total educational spending is apparent:

[A]t least some of the support for statewide financing in California is coming from people who see it as a way to hold down school costs. Taxpayers who have fought school tax increases and been outvoted in their local districts are now pressing to move the decision up to the State level. The lobbies for school improvements tend always to be strongest at the local level. That, in fact, is one reason for the local disparities. Districts with equal wealth choose to tax themselves at different levels. Whatever benefits statewide financing might bring to California's schools, the character of State politics under Governor Reagan suggest that it will not necessarily increase the money spent on them.

(Anderson, *Study in California: Financing Schools: Search for Reform*. Washington Post, May 31, 1972.)

LACK OF RELATIONSHIP BETWEEN EDUCATIONAL SPENDING AND EDUCATIONAL ACHIEVEMENT

The opinion of the *Rodriguez* court is unclear as to whether the gravamen of the constitutional violation found by it consists of the denial of education of equal quality to children in disfavored districts or rather consists of imposition by the State of an unfair relationship between taxes and benefits. As previously noted, if the constitutional violation is founded upon the second theory, the court's position is entirely untenable in light of the rule of *Carmichael v. Southern Coal Company*, 301 U.S. 495, which makes clear that there is no constitu-

tional requirement of a relationship between taxes and benefits. Thus it would seem that the *Rodriguez* plaintiffs found their claim on the proposition that the State is providing their children with education of inferior quality. Certainly they do not urge that matters of taxing and spending generally are to be subject to a strict scrutiny test. Indeed, it is clear that even the rational basis test does not apply to such purely fiscal determinations as to which the powers of legislatures, State and Federal, have traditionally been held to be almost plenary. Since the decision rests upon the premise—rejected by Judge Harvey in his eloquent opinion in *Parker v. Mandel*—that there is something peculiarly significant about the detriment resulting to plaintiffs from the system of educational finance, it was incumbent upon the plaintiffs to show a significant relationship between educational spending and educational achievement. This burden they did not and cannot sustain.

Even cursory review of the evidence in the record reveals that the disparities in spending between varying school districts are largely, if not entirely, explained by two factors: (1) variations in teachers' salaries, largely reflecting similar variations in wage levels and prices in varying portions of the State; and (2) variations in class size. The available studies on the relationship of educational spending to educational achievement speak with almost one voice on the insignificance of such differences. As is well known, the most extensive study of these relationships is that contained in the so-called Coleman Report, U.S. Office of Education, *Equality of Educational Opportunity* (1966). That report concluded:

It is known that socioeconomic factors [of the students] bear a strong relation to academic achievement. When these factors are statistically controlled, however, it appears that differences between schools account for only a small fraction of differences in pupil achievement.

The Coleman Report found that the teacher pupil ratio "showed a consistent lack of relationship to achievement among all groups under all conditions" (p. 312). In addition the Coleman Report observed: "Differences in school facilities and curriculum, which are the major variables by which attempts are made to improve schools, are so little related to differences in achievement levels of students, that, with few exceptions, their effects fail to appear even in a survey of this magnitude."

The Coleman Report was no ordinary research study. It has been described as follows:

The study, *Equality of Educational Opportunity*, was hardly an everyday affair. Commissioned under the Civil Rights Act of 1964, one of the great bills of the 20th century, sponsored by the U.S. Office of Education in a period of its most vigorous leadership, and conducted by leading social scientists at just the moment when incomparably powerful methods of analysis had been developed, the study was perhaps the second largest in the history of social science. Its findings were, if anything, even more extraordinary than its genesis. Stollsky and Lesser summarize these findings with admirable detachment: "Coleman failed to find what he expected to find, direct evidence of large inequalities in

educational facilities in schools attended by children from different majority or minority groups. The study set out to document the facts that for children of minority groups school facilities are sharply unequal and that this inequality is related to student achievement. Data did not support either conclusion. What small differences in school facilities did exist had little or no discernible relationship to the level of school achievement. In effect, the Coleman study was intended to prove beyond further question two central theses of the reform establishment: first that school facilities available to minorities were shockingly unequal; and second that this accounted for unequal outcomes. This, of course, was not found. Coleman's findings thus pose two equally difficult choices for the reform establishment. The first would be to conclude that the achievement of equality of educational opportunity—increasingly defined in terms of comparable educational achievement on the part of minority and majority groups—will require vastly greater expenditures of money and social effort than even they had envisaged. The second would be to conclude that improvement of schools as such should be downgraded in favor of a vast national effort to liquidate the lower class, in Walter B. Miller's phrase, and thereby remove the apparently insurmountable—or at least not likely to be surmounted—restraint on educational achievement among lower class youth, especially in urban ghetto areas. Understandably, the reform establishment chose first of all to concentrate on Coleman's findings, rather than on their implications. . . . A major element in the responses of the reform establishment has been the manifest fact that, heretofore, the public generally has been more willing to consider changes in educational institutions than economic and social institutions. Coleman must be taken to suggest that reform will be considerably more difficult to achieve than has been expected. This is rarely welcome news, and has accordingly been resisted."

(Moynihan, "Source of Resistance to the Coleman Report," in *Harvard Educational Review*, *Equal Educational Opportunity* at 25, 26, 28-29, 30 (1969).)

The report's conclusions have gained much professional respect. See, e.g., the article by former Dean of Harvard Graduate School of Education, Sizer, *Low-Income Families and the Schools for Their Children*, 30 *Pub. Admin. Rev.* 340 (1970); and Cohen, *Policy for the Public Schools: Compensation and Integration*, 38 *Harv. Educ. Rev.* 114 (1968). Reanalyzing the Coleman data, a later study arrived at the same conclusion. (1 U.S. Commission on Civil Rights, *Racial Isolation in the Public Schools* 86 (1967).)

The Coleman Report was a disinterested study. There is no reason to believe that the conclusions reached in it were in any way palatable to Professor Coleman or its other authors, rather the contrary. See Schoettl, *Equal Protection Clause and Public Education*, 72 *Columbia Law Review* at 1378-1388 (1972). Subsequent to publication of the Coleman Report:

A recently published re-examination of the Coleman data by a score of eminent social scientists in a faculty seminar at Harvard University has confirmed the findings of the original report, while avoiding some of the original report's methodological problems. Indeed, this re-examination indicates that the influence of school expenditures on student achievement is even weaker than was indicated by the original Coleman Report. See Mosteller and Moynihan, *A Pathbreaking Report in On Equality of Educational Opportunity* 36-45 (1972); Jencks, *The Coleman Report and the Conventional Wisdom* in *Id.* 69-115; Smith, *Equality of Educational Opportunity: The Basic Findings Reconsidered* in *Id.* 230-42.

(Goldstein, *Inter-District Inequalities in School Financing: A Critical Analysis of Serrano v. Priest and Its Progeny*, 120 University of Pennsylvania Law Review 504, 520, note 50 (1972).)

This recent re-examination of the Coleman Report concluded that the best way to deal with the educational problems of poor children, whatever their race, was to improve the jobs and incomes of their families and also concluded that increased spending on schools had little effect on the educational performance of either lower class children or other children. The Jencks study concluded "the least promising approach to raising achievement is to raise expenditures since the data gives little evidence that any widely used school policy or resource has an appreciable effect on achievement scores."

The findings of the Coleman Report are supported by numerous prior studies. Among them is the leading British study of these matters, the so-called Plowden Report (Central Advisory Council on Education, *Children and Their Primary Schools* (2 volumes, 1967)). The findings of this report have been summarized by Professors Guthrie, Kleindorfer, Levin, and Stout, as follows:

Except for the fact that the study limits itself to a concern for elementary school students, its findings and the controversy surrounding them are not very different from those produced by the Coleman Report in this Nation.

(Guthrie, et al., at p. 74.)

The regression analysis undertaken as part of the national survey of primary education in England reached the conclusion that:

The specific contributions made by the variation in parental attitudes are greater than those made by the variation in home circumstances, while the latter in turn are greater than those made by the variations between schools and teachers that we have taken into account.

(*Id.* Volume II at 188.)

The Encyclopedia of Educational Research (1950), observed in summarizing over 200 research studies on class size:

On the whole the statistical findings definitely favor large classes at every level of instruction, except kindergarten . . . The general trend of evidence places the burden of proof squarely upon the proponents of small classes.

The President's Commission on School Finance recently specially commissioned a survey of the available literature relating to the effects of additional school spending on educational performance. Its final report concluded:

The relationship between costs and quality in education is exceedingly complex and difficult to document. Despite years of research by educators and economists, reliable generalizations are few and scattered. * * * The conviction that class size has an important or even a measurable effect on educational quality cannot be presently supported by evidence. A review of a great body of research on the effects of class size (pupil-teacher ratios, to use a technical term) yields no evidence that smaller classes, of themselves, produce more or better education in any accepted sense. Nor, conversely, has it been shown conclusively that larger classes, of themselves, provide less or poorer education to children—and they obviously cost less.

(President's Commission on School Finance, *Schools, People and Money, Final Report* (1972), at x-xi.)

In a study prepared for this Commission by a distinguished research organization, all available research projects were examined in an effort to determine the effect of class size on educational effectiveness. This study—which examined the body of research in this area—found no discernible difference in student achievement even though classes ranged from 18 to 1 up to 35 to 1 * * *. Despite diligent searches and widespread opinion to the contrary, the Commission finds no research evidence that demonstrates improved student achievement resulting from decreasing pupil-teacher ratios. (16)

(*Id.* at 59.)

The implication of these studies for the relief sought by plaintiffs has been pointed out by many commentators. Thus, it has been rather succinctly observed that:

Any reshuffling of dollars—if spent within the present range of variability on more highly paid teachers, reductions in class size, and buildings—is not likely to have much effect on the tested cognitive skills, or the credentials necessary for entrance into honors programs, jobs or college or on the values of the children. What the reshuffling of dollars will do is reshuffle teacher salaries in rough proportion. That such a result will not materially alter the outcome of schooling for the child should not be all that surprising. Teachers, like the rest of us, are not paid for how well they perform (even if we could define what performance means).

(Diamond, *Serrano: A Victory of Sorts for Ethics, Not Necessarily for Education*, 2 *Yale Review of Law and Social Action* 133, 137 (1972).)

Yet another report has recently reached similar conclusions. Center for Educational Policy Research, *Education and Inequality: A Pre-*

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liminary Report (1971) at 47-64. See also Wynne, *The Politics of Accountability: Public Information About Public Schools* (1972).

The observations of other commentators to similar effect are legion. Thus, Professor Moynihan has observed (*Can Courts and Money Do It?*, New York Times, Jan. 10, 1972 p. 1): "The only certain result that will come from this [the *Rodriguez* decision] is that a particular cadre of middle class persons in the possession of certain licenses—that is to say teachers—will receive more public money in the future than they do now."

Similarly, Professor Roger Freeman of Stanford has observed:

Added school spending provides sizable benefits to teachers and administrators in the form of more and better paid jobs, greater amenities, and reduced work loads. Its tangible advantage to children's education has yet to be demonstrated.

(Address to the Annual Meeting of the National School Boards Association, April 14, 1972.)

The findings of the Coleman Report have met with little significant dispute. The only substantial work purporting to dispute the Coleman findings is the study by Guthrie, Kleindorfer, Levin, and Stout, *Schools and Inequality* (1972). That work is scarcely a disinterested work of scholarship. It was sponsored and paid for by the National Urban Coalition which, the authors tell us, "was specifically interested in supporting an objective study relevant to a Michigan court case of national significance for education * * *. The Board of Education of the School District of the City of Detroit had filed a complaint alleging that Michigan's governmental arrangements for education, violated * * * the Equal Protection Clause. (17) Given this concurrence of interest, we accepted the National Urban Coalition offer of assistance." (*Schools and Inequality* at xvi.) Only the fourth chapter of the resulting book is devoted to the relation of school services to student achievement. However, the study undertaken by these four writers, a fragmentary description of which appears at pp. 84-90 of their book, was not a study of the relation of monetary inputs to educational performance. The extent of the study undertaken or correlations found by them has not been clearly disclosed and it appears that the more significant correlations found related to such matters as the relation between student achievement and such non-monetary variables as teacher morale, teacher verbal ability and the percentage of students transferring into the school—variables which bear no necessary relationship to school spending or at least no demonstrated relationship to school spending. Indeed, notwithstanding the fact that the Guthrie-Levin book is frequently cited as contradicting the Coleman study, when the matters studied in it were put to the test in litigation in Michigan none of its authors appeared as witnesses in the extended trial in the Michigan school finance case. (18) This is scarcely surprising, since Professor Guthrie had shortly before testified in a Michigan law suit involving metropolitan school desegregation problems (*Bradley v. Milliken*, U.S. Dist. Ct. E.D. Mich. No. 35257) that:

Q. Does your familiarity at the moment permit you to agree with me to the effect that the general, returning to the

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implications of Mr. Ritchie's question, the approach of additional dollars without more would seem on the basis of the [Moynihan and Mosteller] reanalysis [of the Coleman Report] as well as the other data to which you referred, to be inadequate in terms of the problem?

A. My response to Mr. Ritchie's question was not based very much on the Coleman Report, rather it was based on my work with Senator Mondale's Select Committee on Equal Educational Opportunity where I have come to see almost every effort we have made at putting additional dollars on the head of poor children has somehow never occurred because we have never gotten the additional dollars there. As Senator Mondale says, "Everytime we try to help poor children in this Nation, someone robs the train on the way." That seems to be what happens when you look at actual delivery of Title I dollars to poor children, it often doesn't get there and a volume which has been mentioned here, "Schools and Inequality, for the State of Michigan," myself and colleagues found a negative relationship between the child's income and the amount of Federal money being spent on him. Well, it wasn't a negative, it was a positive relationship, poor children were not having money spent on them in Michigan the way it was alleged to be the case.

Q. If the dollars got there, but nothing else was changed, including social SES composition and racial composition, would you be optimistic about the dollars spent?

A. No, I would not be optimistic even if the dollars were changed by thousands.

(Transcript of hearing, pp. 523-524.)

Elsewhere at the same hearing Professor Guthrie referred to socio-economic status as "to date the best explainer of a child's school achievement that we have. It is a more powerful explainer than race, for example." (*Supra*, at 450.)

Professor Guthrie's collaborator, Professor Levin, similarly appears to hold to the view that the limited additional increments of funds which "poor" districts would get from an application of the *Rodriguez* doctrine would be of negligible educational value. Dr. Levin testified before the Senate Select Committee on Equal Educational Opportunity (Mondale Committee Hearings, Part 7, p. 3516) as follows:

One of the problems is that additional dollars, as they move into the educational system, have never really been married up to education * * * They have not thought about why the particular techniques approaches, and resources that they have used have failed the same children in the past. They have not questioned whether just larger quantities of the same resources that have failed children in the past are going to succeed * * *.

After an extensive trial concerning these cost-quality issues, in a State unique for its possession of a statewide educational measurement program, the Circuit Court for Ingham County, Michigan, made the following findings, among others:

1. A statewide comparison of State Equalized Valuation Per Pupil v. Composite Achievement reveals a low correlation between test scores of 4th and 7th grade composite achievement tests and SEV.
(Ex. 127, 81, 82; Tr. pp. 2716, 2778.)

2. A statewide comparison of Total Current Operating Expense Per Pupil v. Composite Achievement reveals a low correlation between test scores on 4th and 7th grade composite achievement tests and Total Current Operating Expense.
(Ex. 127, 88, 89; Tr. p. 2224.)

3. A statewide comparison of Total Instructional Expense v. Composite Achievement reveals a low correlation between test scores on 4th and 7th grade composite achievement tests and total instructional expense.
(Ex. 127, 90, 91; Tr. p. 2778.)

4. A statewide comparison of Student Evaluation of Socio-economic Status and State Equalized Valuation Per Pupil reveal a low relationship.
(Tr. pp. 2716 and 2778.)

5. A statewide comparison of Student Evaluation of Socio-economic Status v. Composite Achievement reveals a moderate correlation of test scores of 7th grade composite achievement and student evaluation of SES. Accordingly, statistical analysis of the relationship between student evaluation of SES and composite achievement scores reveals a high degree of relationship.
(Ex. 127, 97, 98, Plaintiffs' Ex. 80; Tr. pp. 2291, 2293.)

6. An analysis of the data compiled by the Michigan Department of Education contained in Exhibit 32, using the stepwise multiple regression-technique indicates that there is a low statistical relationship between monetary inputs and achievement output (Tr. 2634). Thus, the low degree of relationship between financial inputs and achievement outputs found in the uni-variate statistical analysis (scattergrams and correlation coefficients) is confirmed in the multivariate context (stepwise multiple regression equation) (Tr. 2636). On the other hand, in both the uni-variate and the multi-variate context the relationship of SES to composite achievement is moderate at 4th grade and moderately high to high at 7th grade level (Tr. 2638).

7. A statewide analysis of the data contained in Exhibit 32 using the factor analysis technique of 7th grade data, reveals that SES and composite achievement are contained in the same family of variables (Ex. 122; Tr. 2672). Thus, SES appears to be related to the same factor that achievement is related to (Tr. 2672). However, all of the monetary resource variables (SEV, local revenue, and state aid) are found to belong to an entirely different factor (Tr. 2672-73). This indicates that student achievement and SES are operating independently of monetary resources.

Clearly, even a cursory examination of the pertinent educational literature reveals that there is no necessary cost-quality relationship

or, at the least, that these issues are highly debatable. Under these circumstances it is apparent that this case is about taxes and expenditures and not about education and that the State governments possess a rational basis for declining to appropriate the approximately \$10 billion necessary to produce abstract monetary equality with its concomitant detriments to local fiscal control and to the future willingness of voters and legislators to avail themselves of, or appropriate funds for, public school systems. It is hardly appropriate for this court, or any court to try these disputed cost-quality issues; it is no more within the province of courts than it is within the province of legislators, in the face of the conflicting scientific evidence, to make of Professor Guthrie an American Lysenko. (Cf. *Epperson v. Arkansas*, 393 U.S. 97 (1968).)

LACK OF RELATIONSHIP BETWEEN PROPERTY AND INCOME

The essential thesis of the present wave of lawsuits is that there is a necessary connection between variations in the wealth of school districts and variations in the educational outcome of their individual students. But if there is one thing that the literature of this field makes entirely clear it is not merely that there is no connection between educational spending and educational achievement but also that there is no necessary connection between district wealth defined in terms of property and educational spending. The effort to translate the necessary consequence of the division of the Nation into different organs of State and local governments into a deprivation of individual rights must hence fail.

It has been elaborately and repeatedly demonstrated that the property wealth standard utilized by the California and Texas Courts bears no necessary relationship to the individual wealth of residents of the affected school districts and that in no sense is the alignment of school districts a discrimination against poor persons. Even Professor Coons and his colleagues have conceded:

The distinction between collective and individual wealth is worth considering. *Serrano* forbids discrimination in education upon either basis, but it is likely that the proof required at trial will be confined to the realm of school districts. At present it is very difficult to specify the degree to which personal and school district wealth coincide. The economists seem confident that the relation is positive but the anomalies are frequent and sometimes embarrassing. Not only do poor people inhabit rich industrial enclaves with low populations, but they also are found in large numbers in certain large cities, a few of which for school purposes, are relatively well off (e.g. New York and San Francisco—a primary cause is significant private school enrollment). Equally troublesome, perhaps, the rich sometimes live in tax poor areas. *Serrano*, thus, is not a one edged blade for the war on poverty.

(2 Yale Review of Law and Social Action at 114.)

Professor Coons and his colleagues did not identify the economists who concluded that there is a positive relation between personal and school district wealth. But careful studies of the relationship of in-

come to property wealth in two states, Kansas and California, have effectively exploded this notion. In Ridenour and Ridenour, *Serrano v. Priest: Wealth and Kansas School Finance*, 20 Kansas Law Review 213 (1972) the authors observed: "The application of a definition of wealth that relies only on assessed property valuation in Kansas would result in effective discrimination against taxpayers with little income." It further observed, citing a similar study in California (Davies, *The Challenge of Change in School Finance* in National Education Association, Tenth Annual Conference on School Finance 199 (1967)):

The practical result of the *Serrano* rationale in California and Kansas is to strike down de jure discrimination between pupils on the basis of assessed value per-pupil in favor of a scheme of de facto discrimination on the basis of income per-pupil.

(*Supra*, at 224.)

It is even more dramatically observed:

It was pointed out in the previous section that a study in California found only random correlation between districts having high assessed value per-pupil and those having high income per-pupil. On the basis of the foregoing figures it can be argued that there exists in Kansas almost an inverse correlation: districts with highest income per-pupil have low assessed value per-pupil and districts with high assessed value per-pupil have low income per-pupil.

(*Supra*, at 225.)

The study by Davies of California concluded:

California's present criterion of wealth imputes to the high wealth counties ability, that, on the basis of income, they do not possess. Ability to finance education may be exaggerated. These counties can raise equivalent sums of money only by apportioning a relatively greater share of income to taxes.

(Tenth Annual Conference on School Finance at 200.)

These articles point out that in many States the net effect of a change from the present system of school finance to a system of school finance fully consistent with *Rodriguez* and *Serrano* may be to burden more heavily the low income taxpayers. In the authors' words, the *Serrano* court's "conclusion fails to recognize that there is no guaranteed relationship between ownership of property and a fixed yield from it" (*supra*, at 224).

The detriment to minority group pupils as a class from the decision in *Serrano* has already been noted, 59 percent of such pupils living in districts with above average property valuations.

Nor is this all. The New Brunswick experience is illustrative of another possible consequence of the *Serrano-Rodriguez* rule. There, the introduction of full State funding was accompanied by a shift from the property tax to an even more regressive sales tax:

One of the elements that helped sell Equal Opportunity to the people was the fact that it represented "a shift away from

direct taxation as exemplified by property taxes * * * toward indirect taxation—the sales tax,” explained Mr. Arsenault [principal Secretary to the present Prime Minister]. “Property taxes especially went down.”

(Advisory Commission on Inter-governmental Relations, *Who Should Pay for Public Schools* at 10.)

Thus, not only on the expenditure side but also on the tax side it is possible, indeed probable, that introduction of the *Rodriguez-Serrano* rule may be actually detrimental to spending on the education of children of low-income families.

It should further be noted that the lack of relationship between low district property values and low educational achievement is exacerbated by another factor: the extreme present reluctance of many low property value districts because of low educational costs in rural areas to make even an average tax effort for education. The importance of this effort factor was noted by the court in *McInnis v. Shapiro*, 203 F. Supp. at 333 (N.D. Ill. 1968). It is also dramatized by the study of a State commission in Maryland which revealed that a large part of the lower expenditures in many smaller rural counties was accounted for not by lower resources but by lower tax effort. (See the table on “Effect of Differences in Effort” in [Maryland] *Commission to Study the State's Role in Financing Public Education, Background Information* (May 1970), p. 68.)

A REPRESENTATIVE STATE AID PROGRAM

It is the thesis of the framers of plaintiffs' theory that legislatures are incapable of independently re-examining State aid programs unless prodded to do so by courts, that State aid formulas constitute examples of “settled wrong,” that existing State spending patterns and school district lines should be viewed for purposes of constitutional assessment as though each State had a single united State school system, that existing formulas are capricious, unjust, and irrational, and that the explosion of legislative creativity they profess to desire is dependent upon judicial invalidation of existing formulas. Examination of the history and rationale of State aid to education in a representative middle-sized State, Maryland, is sufficient to explode all these notions.

In Maryland, as in Virginia, North Carolina, and some Southern States, school district lines correspond exactly to the long established district lines of Maryland counties, just as in many New England, Midwestern, and Western States school district lines correspond exactly to town and township lines. The Maryland counties were established at early dates. Eleven of the 24 subdivisions were established within their present borders prior to 1695; all but six of them were established prior to the ratification of the Constitution of the United States; and all but one of them were established prior to ratification of the Fourteenth Amendment, the most recent erection of a Maryland county having taken place in 1872. The dates of origin of the Maryland counties are as follows: St. Mary's 1637, Kent 1642, Anne Arundel 1650, Calvert 1650, Charles 1658, Baltimore 1659, Talbot 1662, Somerset 1666, Dorchester 1668, Cecil 1679, Prince George's 1695, Queen Anne's 1706, Worcester 1742, Frederick 1748,

Caroline 1773, Harford 1773, Washington 1776, Montgomery 1776, Allegany 1789, Carroll 1836, Howard 1851, Wicomico 1867, Garrett 1872. See generally Maryland Geological Survey, *The Counties of Maryland, Their Origin, Boundaries and Election Districts* (1907), 426-572. Article 13, Section 1 of the Maryland Constitution of 1867, still in effect, effectively forbids the erection of new counties by providing that no new county shall contain less than 400 square miles or less than 10,000 inhabitants nor shall any existing county be reduced to less than the same amount in order to form a new county.

Maryland school boards possess no independent taxing authority. The taxes levied for schools are levied by the county governments and that of Baltimore City and included in county budgets. The counties are accorded by the State power to impose unlimited property taxes as well as limited local income taxes and various other taxes. No Maryland subdivision has exhausted its taxing authority apart from the property tax; each subdivision is empowered to levy taxes which it does not levy. The Maryland counties accord varied exemptions from their local property taxes (see *28th Biennial Report of the Maryland State Department of Assessments and Taxation* at 19-22.) Real property assessment is carried out and organized on a county basis under the supervision of a State agency (Maryland Code, Art. 81, §§ 232 ff.). In no sense does Maryland have a unified school system.

Maryland once had a State school system, created by Article VIII of the Maryland Constitution of 1864, which provided for a State property tax to be distributed to the counties on a per pupil basis and for a powerful State Superintendent of Schools. The Convention adopting the present 1867 Constitution expressly repudiated this State system in favor of a system under local control. See the Report of the [Maryland] School Law Revision Commission (1968), at 27, summarizing the history and see Perlman (ed.), *Proceedings of the Maryland Constitutional Convention of 1867*, at 200-202: "The economic expenses of the system, the mode of raising the money and the mode of expending it, and the power of the superintendent, are all reasons why this system should be dispensed with. * * * The whole system has radical, fundamental objections. It would be supposed that it would be right to commit the expenditure of those funds to those who contributed them, but these funds are placed beyond the control of every parent and guardian in the State; those who bear the burdens are denied all share in their direction." (Remarks of Delegate Kilbourn.) "Concerning the [State] system, he would say that it required an infallible head and an inexhaustible treasury. [Laughter]" (remarks of Delegate Farnandis).

The limited remaining powers accorded the State Superintendent of Schools under the legislation adopted under the 1867 Constitution are generally inapplicable to the Baltimore City system (see Md. Code, Art. 77, §§ 142-145), which is independent of most of these mild measures of State control. The existence of large county school districts has always limited disparities in school spending in Maryland, as has the fact that each county contains groups of widely varying income. Indeed, "the formation of single countywide school districts—as in Maryland and Nevada—is often advanced as a solution to resource disparities among school districts." (Advisory Commission on Inter-

governmental Relations, *State Aid to Local Government* (1969), at 49; *Mondale Committee Hearings*, at 8473.) Nonetheless, Maryland has taken many measures to further equalize school spending. The initial such measure was taken by the adoption of a comprehensive school aid formula by Chapter 383 of the Maryland Acts of 1922. That formula was not the creation of a rustic legislature. It was prepared under the sponsorship of the General Education Board of New York by Dr. Abraham Flexner of Johns Hopkins, best known for his work leading to the reform of medical education in the United States.⁽¹⁹⁾ The formula adopted anticipated that summarized the next year in the pioneering work by Professors Strayer and Haig, *Financing of Education in the State of New York* (1923), of which Professor Coons and his colleagues have written:

The pioneer effort to translate the philosophy of equal education opportunity into a viable State finance program adjusting for district wealth variation was made by George E. Strayer and Robert M. Haig in 1923 and later refined and developed by Paul R. Mort.

(*Private Wealth and Public Education* at 63.)

The 1922 act provided for a foundation program of education in each county based upon set-pupil-teacher ratios, a State minimum salary scale graduated to qualifications and experience of teachers and additional allotments founded on the theory that teachers' salaries should constitute not more than 76 percent of total current costs. The portions of this program which could not be financed by the counties from a uniform tax were paid for by the State equalization fund.

In the years following its enactment, the program was periodically reviewed and progressively amended. In 1927 a State retirement program for teachers was added; in 1929 a State program of education for the handicapped was added; in 1933 aid to transportation costs was added and in 1939 differentials between elementary and secondary school salary scales were eliminated. "This became known as the Maryland Single Salary Scale because Maryland was in the vanguard of this progressive advance." (*Report of the School Law Revision Commission* at 12.)

In 1941, the program again underwent extensive review by eminent authorities from outside of Maryland, the State engaging the services of Dr. Herbert Bruner of Teachers' College, Columbia University to direct a study for the Maryland School Survey Commission. The report concluded:

In the intervening 25 years [since the Flexner report] strong leadership in the State department combined with active and capable local initiative, has brought to fruition many of the recommendations which the General Education Board Survey Commission made. The present system of State aid in Maryland is one of the most advanced in the country.

(*Supra*, at 63.)

In the same year, a court in Maryland (Chesnut, J.), approvingly quoted a bulletin of the U.S. Bureau of Education describing the

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program in glowing terms as "in a sound and relatively satisfactory way, equali[zing] school burdens, revenues, and educational opportunities." The opinion listed in detail "the outstanding features of the Maryland system of school support." (*Mills v. Lowndes*, 26 F. Supp. at 797 n.3 (D. Md. 1939).)

Following the war, the program underwent extended review by two distinguished State commissions, the Sherbow Commission (1948), and the Green Commission (Maryland Commission to Study Public Education and Finances) (1952). The latter of these commissions, in summarizing the history of educational progress in Maryland, noted the pioneering role in introducing new programs played by bell-wether school districts. Neither of these commissions recommended full State funding, both noting the detriment that would result from it to Baltimore City, then the richest subdivision in the State and the only subdivision not to benefit from the equalization fund. See the *Report of the Maryland Commission to Study Public Education and Finances* (1952), especially at p. 55.

Various liberalizing recommendations of these commissions were enacted into law, these including a revision of salary scales in 1947, an increase from \$200 to \$400 in aid for handicapped children and the addition of the 12th grade to the foundation program in 1949, further salary increases in 1953 and 1955, creation of an incentive fund for school children in 1956, and creation of a program of aid to preschool handicapped children in 1957.

In 1958, the Maryland program underwent an unusually comprehensive review. The State again went outside its borders to engage the most eminent student of school financing in the Nation, Professor Paul Mort of Columbia. The resulting study occupies a summary volume and 13 printed volumes, issued over a period of 3 years, as follows:

- Staff Study 1—Stapleton, *Educational Progress in Maryland Public Schools Since 1916* (1959);
- Staff Study 2—Dorn, *What Money Does and What it Does Not Do* (1959);
- Staff Study 3—Sartorius, *The Fortunes of Equalization in Maryland Since 1920* (1959);
- Staff Study 4—Zimmerman & Walker, *The Tax Potential of Maryland, State and Local* (1959);
- Staff Study 5—Zimmerman, *Fiscal Adjustments Over a Century* (1959);
- Staff Study 6—Woollatt, *The Measurement of Cost in Maryland Public Schools* (1959);
- Staff Study 7—Woollatt & Zimmerman, *An Economic Index of the Maryland Taxpaying Ability of Maryland Public School Systems* (1960);
- Staff Study 8—Willis, *A Program of Financing School Construction Designed to Safeguard the Current Operating Program in Maryland* (1959);
- Staff Study 9—The Growing Edge Committee, *The Maryland Schools and Mid-Century Needs*;
- Staff Study 10—The Staff Characteristics Committee, *Maryland's Twenty-four Instructional Teams*;
- Staff Study 11—Dorn, *The Allocation of School Expenditures in Maryland Counties*;

Staff Study 12—Hardesty, *The Relation of Expenditures in Higher Education to Expenditures for Elementary and Secondary Education*;

Staff Study 13—Rhodes, *Lay Participation in School Budget Development in Maryland*.

In the staff study dealing most directly with equalization problems, Sartorius, *The Fortunes of Equalization in Maryland Since 1920* (Staff Study No. 3), it was observed:

It is well to bear in mind that the educational advantage of local participation in school support is that it frees the vigorous local units to forge ahead in meeting the problems education comes to face in changing times. Such local units by their pioneering become leaders for the State. (p. 9).

The Sartorius study, by way of introduction, observed:

New legislation has merely incorporated into this (State-local) partnership certain features that were inaugurated in the local school systems. That is to say that, in the main, improvement in the school system has taken place on certain local levels and as the idea spread it became part of the total State program. This means further that the partnership in respect to support has always lagged on the part of the State, but, in fairness, it must be said that it has inevitably followed, and it is safe to conclude that it always will (p.1).

From this summary characterization of the history of educational progress in Maryland the Sartorius study concluded:

Equalization demands more than helping the poorer local units. It connotes equalization of an *adequate* program, but it certainly does not demand levelling down. (p. 11).

The Sartorius study expressed concern that the equalization system then in operation in Maryland, while providing for a high degree of equalization in Maryland relative to other States, had not given rise to a high degree of local effort and that in consequence Maryland appeared to lack bellwether school districts in which new improvements might serve as an example for the entire State.

This concern was in accord with Professor Mort's concern for local tax leeway:

Paul Mort advanced a number of refinements in the Strayer-Harg plan with his associates and disciples at Columbia University. Among them were * * * 4 local tax leeway * * * The concept of local tax leeway provided for a downward adjustment of the rate of local contribution so that almost all districts would receive some State aid. Also the local district would have the discretionary power to tax itself beyond the local contribution rate in order to purchase its own unique program, presumably of a quality beyond the so-called State-mandated minimum.

(Garvue, *Modern Public School Finance* (1969), 228-29.)

Subsequent changes rapidly ensued. Increases in the salary component of the foundation program took place in 1958, 1960, and 1961,

increases in the basic aid component in 1960 and 1961, and an increase in the building incentive component in 1961.

The years following 1964 witnessed an explosion of creativity in educational finance in Maryland. Four major developments took place:

1. In the period 1964-1967, a distinguished State commission, the Maryland Commission on State and County Finance, recommended sweeping changes in the financing of education and other public services in Maryland, changes reflected in two major acts of the Maryland legislature, Chapter 17 of the Acts of 1964, and Chapter 142 of the Acts of 1967. By virtue of these changes, Maryland became the first State to consider income as well as property wealth in its State educational equalization formula, a change of particular benefit to Baltimore City. In addition, the State's first graduated income tax was enacted, supplanting a flat rate tax, and special subventions to the subdivisions for police services were provided for including a special lump sum appropriation to Baltimore City. This has been described as "a revolutionary change in support for Maryland schools. A unique feature is that per capita income is used as a factor in determination of the relative fiscal capacity of local school systems. * * * The elements making up the foundation program were raised to levels representing current average practice throughout the State * * *" A program of current expense incentive aid was created. "A notable improvement in this law was its establishment of a fixed percentage for the State's share in the foundation program."

(*Report of the School Law Revision Commission* (1968), at 29.)

2. In 1968, another State commission, the School Law Revision Commission, after a study of equalization problems, refrained from endorsing full State funding or full equalization, recommending instead a focus upon the needs of urban districts.

The State should provide special, categorical financial aid for the education of children from an economically deprived environment. Such educational programs should be designed to compensate for the lack of prior appropriate learning experiences and to provide meaningful early childhood experiences before age 6. (at 31).

The recommendations of this commission were anticipated by the legislature. By Chapter 142 of the Acts of 1967 the foundation aid program was extended to kindergarten children. By Chapter 754 of the Acts of 1969 and again by Chapter 4 of the Acts of 1970 a special program of "density aid" to Baltimore City created by the 1967 Act (see the similar suggestion by the Lawyers Committee for Civil Rights, Compact, April 1972, p. 41) was enlarged and increased.

3. In 1970, another State commission, the Commission to Study the State's Role in Financing Public Education, recommended full State assumption of the costs of public school construction. The legislature, acting almost immediately, adopted this recommendation by Chapter 624 of the Acts of 1971, Mary-

land thus becoming the first State in the Nation to fully assume school construction costs. In fiscal 1972, appropriations for this program approximated \$150 million, raising the State's share of education spending from 31 percent to 39 percent. The budget estimate for this program for fiscal 1973 is approximately \$300 million, all of it to be allocated by a State agency solely on the basis of educational need, which will further raise the State share of total school spending and will also operate to a considerable but as yet undertermined degree to elevate the level of school spending in poorer counties to a figure closer to the State average. The commission, though split on the issue, refrained from recommending full State funding of current expenses. Its recommendation that the State assume 55 percent of all existing current expenses in the several subdivisions, essentially a tax relief rather than equalizing measure, was not adopted, the legislature instead provided for distribution of an added fund of \$22 million to subdivisions on a basis inverse to wealth by Chapter 4 of the Acts of 1970.

In 1971, another distinguished State commission, the Commission on the State Tax Structure under the chairmanship of Professor Edwin Mills of the Johns Hopkins Economics Department considered and rejected proposals for full State funding of education, recommending instead a program of general purpose grants akin to revenue-sharing to subdivisions with large numbers of persons below the poverty level. In rejecting full equalization of education, the Mills Commission observed:

Thus the relative burden of taxes in support of a particular program is very nearly the same in all jurisdictions [under equalization]. The problem with this approach is that each jurisdiction is forced to consume exactly the service level decreed by the State. Although it may be desirable to force or induce low income jurisdictions to consume a higher level of some services than they otherwise would, because of the State's interest in those services, it is not so clear that it would be desirable to force higher income jurisdictions to consume a lower level of services than they would prefer. If educational attainment is a desirable thing, the State surely doesn't want to be in the position of curtailing it in those jurisdictions that are likely to excel. State assumption of a local service is desirable only when a very large proportion of the benefits of a service are statewide and when most people desire similar levels of the services. This does not appear to be the case for education for example. (At 264).

It is thus clear that plaintiffs' proposals have not been neglected or ignored in Maryland, but rejected on their merits by disinterested public bodies.

One further instance of rejection deserves to be noted. In 1967, the abortive Maryland Constitutional Convention meeting in that year had before it a proposal to fasten on the State a rule substantially

equivalent to that proposed by plaintiffs here. The proposal received extensive discussion. It was rejected on the floor of the convention after it was pointed out that such a provision "would discourage and frustrate local initiative," and effectively prevent or postpone new initiatives in education. Excerpts from the competing reports appear as an appendix to Kurland, *Equal Educational Opportunity*, in Daly (ed.), *The Quality of Inequality* (1968), at 67-72.

Professor Kurland accurately concludes:

The arguments addressed by the reports * * * are certainly relevant to the issue whether the Supreme Court should attempt to impose on all of the States what the delegates to the Maryland Constitutional Convention were unwilling to impose on their own State.

At present, State educational programs are continuing to undergo review in Maryland. The Governor's Education Counsel, a former superintendent of schools of one of the poorer counties, has opposed on principle full equalization or full State funding (Spigler, *Address to the Maryland Association of Counties*, January 20, 1972). The Governor, on June 8, 1972, appointed a new task force to consider reallocation of the presently available State funds in a fashion which "will avoid doing drastic damage to the school system or taxpayers of any particular jurisdiction" and which "will require little, if any, increase in the very large sum of money (\$343,425,540 in fiscal year 1971) that the State is already pumping into the local school system." (20)

Those advocating equalization at the Montgomery County level together with freezing of that county's expenditures have conceded that this *Rodriguez*-type approach would require additional revenues in Maryland of \$200 million per year, equal to 3 percent on the present sales tax base. Wise, *School Finance Equalization Lawsuits: A Model Legislature Response*, 2 *Yale Review of Law and Social Action* at 130, precluding the State legislature for at least 3 years from "begin[ning] to set levels for education in competition with its assessment of needs for other public services." (*Id.* at 130.)

ADVERSE EFFECTS ON INTERESTS OF URBAN AREAS AND RACIAL MINORITIES

The relief granted by the *Rodriguez* and *Serrano* courts, far from being the advertised panacea to problems of minority and urban education is, as some of its original supporters have come to recognize, actually destructive of the interests of urban areas and the interests of minority children.

Nothing makes this clearer than consideration of the evidentiary material upon which the *Rodriguez* court purported to base its decision. The principal such piece of "evidence" was a lengthy narrative affidavit of Joel S. Berke of Syracuse University, filed at an extremely late stage of the litigation under circumstances which precluded the State from making effective reply. It has been observed of this affidavit that:

It is true that the three-judge Federal district court which invalidated the Texas school financing system in *Rodriguez*

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found that "those districts most rich in property also have the highest median family income and the lowest percentage of minority pupils, while the poor property districts are poor in income * * *". The basis for this finding was an affidavit submitted by plaintiffs and cited by the court. As a basis for the court's conclusion, this was a questionable source; a careful reading of the data contained in the affidavit creates grave doubt about the validity of its conclusions * * *. The *Rodriguez* court cited the affidavit as showing a median family income of \$5,900 in the 10 districts with the highest tax base per-pupil and \$3,325 in the four districts with the lowest tax base per-pupil [337 F. Supp.] at 282 n. 3. The following are the study's figures:

Market value of taxable property per pupil	Median family income from 1960	Percent minority pupils	State and local revenues per pupil
Above \$100,000 (10 districts) -----	\$5, 900	8	\$815
\$100,000 to \$50,000 (26 districts) ---	4, 425	32	544
\$50,000 to \$30,000 (30 districts) ----	4, 900	23	483
\$30,000 to \$10,000 (40 districts) ----	5, 050	31	462
Below \$10,000 (4 districts) -----	3, 325	79	305

(Affidavit of Joel S. Berke at 6 (footnotes omitted).)

The five category breakdown of school districts seems to be arbitrary, and it is only this breakdown which appears to produce the correlation of poor school districts and poor people. Even on this breakdown, however, the correlation is doubtful. Note the very small number of districts in the top and bottom categories. Even more significant is the apparent inverse relationship between property value and median income in the three middle districts, where 96 of the 110 districts fall. While the family income differences among the three groups of districts are small, they may be even more significant if categories are weighted by the number of districts in each. At the very least, the study does not support the affirmative correlation of poor school districts and poor people stated by the court and the affiants; this is, however, the study the court relied upon, and it is apparently the only study which purports to show such correlation.

(Goldstein, *Inter-District Inequalities in School Financing: A Critical Analysis of Serrano v. Priest and Its Progeny*, 120 University of Pennsylvania Law Review 504, 523 and note 67 (1972).)

Professor Berke has since pursued his studies of the effects of the *Serrano-Rodriguez* rule and has reached conclusions dramatically at variance with those advanced in or at least suggested by his affidavit in *Rodriguez*.

Two monographs prepared by Professor Berke have since been published (Select Committee on Equal Educational Opportunity, United States Senate, *The Financial Aspects of Equality of Educational Opportunity and Inequities in School Finance* (January 1972).) The

second of these monographs considers the results which would obtain in the event that a State adopting the *Rodriguez* rule provided for full State assumption of the costs of education and equal per-pupil expenditures, the costs of this program being funded by a proportional income tax. The study notes that similar results would obtain if the State educational program were funded from another broadbased nonprogressive tax such as a statewide sales or property tax. It need scarcely be labored that the line of least resistance for States confronted with a *Rodriguez*-type decision will be movement to a statewide property tax. Professor Berke and his colleagues conclude in this study:

Despite the widespread enthusiasm that the California, Minnesota and Texas cases have raised throughout the Nation, it is our belief that finance reform of the type just described will not result in removing the major inequities in American educational finance and *on the contrary may well exacerbate the problems of a substantial proportion of urban schools*. The results are rather sobering for those concerned about the urban financial crises. *In three-fourths of the cities in these large metropolitan areas, school taxes would rise and of the six exceptions to this tendency three are located in a single state, Ohio, and in a fourth the tax rates would remain virtually the same. The expenditure implications, however, are even more jarring.* For this aspect of the analysis we have assumed that the local share of revenues assumed by the state would be re-distributed on an equal per-pupil basis throughout the state. * * * *Nearly twice as many central cities would receive lower expenditures from the states under equal statewide per-pupil distribution of funds than they presently receive under the existing revenue structure.* In a number of cases, for example, New York City, the proportion of income tax for educational purposes would rise from 2.5 percent to 3.1 percent yet the expenditures from local sources that were \$64 in the 1970 school year would drop under an equal per-pupil statewide re-distribution of the state assumed local share to \$636. In short, not only would New York be paying more, under equal per-pupil statewide redistribution, it would be receiving less. * * * Under our revenue-expenditure model, educational resources are being re-distributed from large cities to other parts of the State. The reason for this phenomenon lies in the analysis already discussed * * * which showed that city tax rates for education were lower than in the surrounding areas because city tax rates for all governmental functions combined were higher than in other parts of metropolitan areas. The explanation for the expenditure effect has also been shown: city educational costs are considerably higher than those in other parts of the state; and, while expenditures in cities are not as high as their added costs and greater educational need requires, they are higher than expenditures in rural areas and in some suburban areas. *Certainly, city school expenditures usually are above the statewide average of districts, and thus, cities lose or only break even in plans that have equal per-pupil expenditures*

throughout the state or which "level-up" to the state average. To show the impact of our tax-expenditure model on cities and their suburbs, we took a random selection of 13 of the 37 largest metropolitan areas, and looked at a large central city and its county. * * * In six of the eight large cities in the Northeast and Midwest, suburban taxes would rise under state assumption, but the rise would be markedly less than in the cities in most cases. Both areas would be redistributing to nonmetropolitan areas or to the least urbanized portions of metropolitan areas. In the South the tax impact of statewide assumption would permit the suburban counties in both metropolitan areas to reduce tax effort for education, while the cities would get either a lesser degree of tax relief or none at all. In the West, all three cities would have their tax effort increased, while that would be the case for only one suburban county. Table XVI shows the comparative central city-suburban expenditure results. * * * After equal per-pupil distribution of the state assumed local share, the third column shows the new statewide expenditure levels from what were formally local revenues. Only two of the eight Northeastern and Midwestern cities gain, while only one suburb does, and the rates by which the suburbs exceed the state average are substantially higher than in the cities.

(*Id.* at 66-69; emphasis added.)

The Berke study contains (at 67) a detailed table which is instructive, and which is set out below.

TABLE XIV.—*Tax effort and expenditures implication under State assumption and equal per pupil distribution*

	Percent of Income taxed for school purposes		Local expenditures per pupil		
	1970	Under State assump- tion	1970	Statewide equal expendi- tures	Local expendi- tures under statewide tax rate ¹
Northeast:					
Baltimore, Md.....	3.4	3.7	\$444	\$538	\$486
Boston, Mass.....	2.5	3.6	522	632	741
Newark, N.J.....	3.4	3.8	587	707	648
Paterson-Clifton- Passaic, N.J.....	(²)	3.8	(²)	707	797
Buffalo, N.Y.....	1.6	3.1	347	636	662
New York, N.Y.....	2.5	3.1	694	636	863
Rochester, N.Y.....	3.0	3.1	697	636	727
Philadelphia, Pa.....	2.0	2.7	444	446	593
Pittsburgh, Pa.....	2.5	2.7	596	446	650
Providence, R.I.....	2.9	2.8	701	477	678
Midwest:					
Chicago, Ill.....	1.4	3.3	307	600	754
Indianapolis, Ind.....	2.4	2.8	415	377	495
Detroit, Mich.....	2.1	2.9	439	396	589
Minneapolis-St. Paul, Minn.....	2.3	3.3	582	429	835
Kansas City, Mo.....	(³)	3.0	(²)	408	428
St. Louis, Mo.....	2.7	3.0	422	408	469

See footnotes at end of table, p. 423.

TABLE XIV.—*Tax effort and expenditures implication under State assumption and equal per pupil distribution—Continued*

	Percent of income taxed for school purposes		Local expenditures per pupil		
	1970	Under State assump- tion	1970	Statewide equal expendi- tures	Local expendi- tures under statewide tax rate ¹
Cincinnati, Ohio	4.6	3.4	677	490	499
Cleveland, Ohio	4.8	3.4	749	490	530
Columbus, Ohio	3.0	3.4	479	490	546
Dayton, Ohio	3.7	3.4	632	490	568
Milwaukee, Wis.	3.4	4.3	599	573	708
South:					
Miami, Fla. (Dade County) ..	1.6	1.8	287	383	324
Tampa-St. Petersburg, Fla. ..	1.3	1.8	222	383	315
Atlanta, Ga.	2.4	1.5	395	175	350
Louisville, Ky.	1.6	1.6	341	191	343
New Orleans, La.	1.5	1.9	261	212	325
Dallas, Tex.		2.2	(²)	275	409
Houston, Tex.		2.2	(²)	275	364
San Antonio, Tex.		2.2	(²)	275	259
West:					
Los Angeles-Long Beach, Calif.		2.9	(²)	433	531
San Bernardino, Riverside, Ontario, Calif.		2.9	(²)	433	403
San Diego, Calif.		2.9	(²)	433	423
San Francisco-Oakland, Calif.	2.5	2.9	709	435	817
Denver, Colo.	3.3	4.3	667	507	864
Portland, Oreg.	2.3	2.0	442	672	980
Seattle-Everett, Wash.	1.7	2.3	436	328	608

¹ Local revenues that would be generated if the statewide rates were applied but the revenues raised by those rates were retained for local expenditure.

² Not compiled.

The Berke table reveals that a shift from local to statewide property taxes coupled with distribution on an equal per-pupil basis, the probable political result of *Rodriguez*-type decisions, would be an almost unmitigated calamity for most large cities, including the cities of Boston, Buffalo, New York, Rochester, Philadelphia, Pittsburgh, Providence, Chicago, Indianapolis, Detroit, Minneapolis-St. Paul, Kansas City, St. Louis, Columbus, Milwaukee, Atlanta, Louisville, New Orleans, Los Angeles, San Francisco, Oakland, Denver, Portland, and Seattle. Virtually all these cities have poor and minority populations which greatly exceed the State average.

Professor Berke and his colleagues have summarized their findings as follows:

If * * * a statewide property tax is employed, and the rates are higher than the characteristically lower education tax rates of the central cities—total tax rates are higher in cities than in other regions of states because of the demand for general governmental services—the results of *Serrano* type litigation would be higher taxation of urban areas for education than is currently the case. If the alternative selected for the

distribution of educational services is the equal expenditures approach rather than some measure of educational need, since large city educational expenditure levels tend to be higher than the average for the entire state—although they are generally lower than most of their suburbs—the results of a school finance case could result in no additional urban expenditures and perhaps even a lowering of them to a rigidly enforced state norm. In short, the result of one possible constitutional alternative—statewide assumption of educational costs through a state property tax and a distribution of educational services through an equal expenditures per child formula—could result in higher taxation of city residents for the benefit of education in suburban or rural areas.

(*Id.* at 33-34; emphasis added.)

Professor Berke and his colleagues are not alone in these findings. The study conducted by the U.S. Office of Education, *Finances of Large City School Systems: A Comparative Analysis* (DHEW Publication No. OE72-29 1972) conducted an even more extensive survey of the effects on large cities. The study found that 16 out of 25 representative large city school systems had above average assessed valuations, and that 16 out of 25 also had average or below average tax rates for education.

That study also found that if all school systems in the respective States collected all presently collected local funds for education and redistributed them on a equal funds per-pupil basis, only 29 of the 84 urban school systems studied would receive more funds. If the distribution were made not on an equal dollars-per-pupil basis but on an equalization basis rewarding areas with low property values, the results for the large cities would have been even more disastrous.

Indeed, one cannot view without wonder the extent to which ideology has triumphed over good sense in the work of some of the defenders of the *Rodriguez* doctrine. An especially spectacular example, of this tendency is found in the recommendations of the Report of the New York State Commission on the Quality Costs and Financing of Elementary and Secondary Education. That Commission recommended a shift from the present mode of financing to a regime in which State property taxes would supply all educational funds, the funds to be redistributed on a per-pupil basis modified by factors designed to channel more funds to large cities. Under its recommendations a uniform State property tax of \$2.04 per \$100 would be imposed for educational purposes. The present tax rate in New York City for education is \$1.89, in Buffalo \$1.44, in Albany \$1.77, in Syracuse \$1.66, in Rochester \$1.72 and in Yonkers \$1.74. The "big six" cities in New York would be presented by this "reform" measure with massive increases in property taxes. By contrast, sweeping reductions would be mandated for those suburban areas now making high tax efforts on education. The tax effort for education in Scarsdale would drop from \$2.58 to \$2.04, in Hempstead from \$2.61 to \$2.04, in New Rochelle from \$2.49 to \$2.04 and so on. (*Id.* at p. 233. (21).)

Against this background it is scarcely a source of wonder that disenchantment with the *Serrano-Rodriguez* doctrine has set in. Thus, William L. Taylor, former staff director of the U.S. Civil Rights

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Commission and now director of the Center for National Policy Review, Catholic University Law School has testified:

In the first place, it is being discovered rather belatedly that in some areas there is no correlation between the property wealth of an area and the wealth of families who reside there. This means that in New York City which has a good tax base and many poor families, poor and minority children would be hurt—not helped—by an application of the *Serrano* principle redistributing property wealth for school financing purposes. Second, the *Serrano* decision points not toward a system of financing based on educational need—which is what poor children really require—or even to equal expenditures, but simply to equalizing the property tax base. Third, even in the best of circumstances, there is no persuasive evidence that differences in expenditures—unless they are massive—produce significant differences in educational outcome. It is highly problematical that increases in expenditure alone will produce for poor children the higher quality teaching they so desperately need.

(Mondale Committee Hearings, p. 10472.)

The kindest thing that Mr. Taylor could think of to say about the *Rodriguez* doctrine was that "it will strip away one rationale that affluent suburban communities employ for refusing to provide shelter for poor and minority families from the central city," surely a minor and remote consequence.

Mr. Norman J. Chachkin of the NAACP Legal Defense and Educational Fund, a supporter of metropolitanization of school districts, has observed:

Some of the schemes proposed in the wake of the California decision could make the cure worse than the ailment. Many school districts—particularly urban districts—could get less money under a revised aid scheme than they get now. The failure of the *Serrano* litigants and court, in their haste to avoid the *McInnis* problem of defining educational need, to propose acceptable remedies puts the burden on state legislatures.

I would not be surprised if many respond by abolishing the flat grant, minimum foundation and all categorical aid programs, equalizing effective assessment ratios, levying and collecting a uniform property tax on a statewide basis, and then distributing to the existing school district structures on an equal dollars per-pupil basis. Not only will this be extremely bad for the education of minority and disadvantaged children, but I wonder how such a restricted revenue base might affect a school district which had in the past negotiated contracts with an affiliate calling for higher than average teachers' salaries.

(Mondale Committee Hearings, p. 10905.)

To similar effect see Myers, *Second Thoughts on the Serrano Case*, City: The Magazine of the National Urban Coalition, volume V, number 6 (Winter 1971), at page 38; Bassett, *Leaders of Urban Schools*

Oppose Dollar-A-Scholar, Baltimore News-American, March 16, 1972, page 1, column 4; Goldstein, *supra*, 120 University of Pennsylvania Law Review 504, 526 (1972).

Nor is the probable detriment to large cities resulting from the *Rodriguez* rule a function of the fact that the rule applies only to property tax bases:

An equalization principle that operated beyond the sphere of property tax base wealth could work against the cities in another area. Local nonproperty taxes, though limited in significance to a few States * * * may also disproportionately favor urban centers. In a study of Alabama, Kentucky, Louisiana, Maryland, New York, Pennsylvania and Tennessee for 1968-1969, school districts were classified into central city, suburban, independent city and rural districts. It was found that in five of the seven States * * * the rural districts received the least amount of revenue per pupil from such local nonproperty taxes; in four of the seven States * * * the central city districts received the most revenue per pupil. The average ranking for the seven States showed that the central city school districts on the average received the most revenue per pupil from local nonproperty taxes, followed in order by suburban, independent city, and rural districts.

(*Alternative Programs for Financing Education* 186-187 (1971)
(National Educational Finance Project, Volume V).
Goldstein, *supra*, at 526 note 73.)

Not only will large cities not benefit from *Rodriguez* but it has also been established that minority groups will not benefit from the *Rodriguez* rule. Though the U.S. Civil Rights Commission has claimed that some moderate benefit would accrue to Mexican-American children in Texas, its studies of the school systems of California, Arizona, New Mexico and Colorado, conspicuously failed to find any detriment to Mexican Americans from operation of the existing system of school finance. Similarly, Coons, Clune, and Sugarman, *A First Appraisal of Serrano*, 2 Yale Review of Law and Social Action 108, 120 note 37, observe:

The racial district wealth pattern may be other than intuition might suggest. In California, over half the minority pupils reside in districts above the average in assessed valuation per pupil.

Professor Coons and his colleagues have noted:

If racial discrimination were measured by the percentage of all minority students who reside in districts below the statewide median average valuation per-pupil, California would manifest inverse discrimination. 59 percent (683,919) of minority students live in districts above the median average valuation per-pupil. The percentage is considerably higher for Negroes; Indians and those with Spanish surnames are nearly evenly divided above and below the median. The minority figures were taken from an unpublished survey for the State Department of Education by F. R. Gunsby, "Racial and Ethnic Distribution of Public School Pupils,

District Report, October 1968." The average valuations per pupil are from California Public Schools Selected Statistics, 1967-68 (Sacramento).

(Coons, Clune, and Sugarman, *Private Wealth and Public Education* at 356 note 47.)

The disenchantment of large cities with the *Serrano* rule is dramatized by the case of San Francisco which initially filed an Amicus Curiae Brief in support of the plaintiffs in *Serrano*, see Myers, *supra*. More recently, we are told, "San Francisco has joined several of the small wealthy districts to organize a lobby ('Schools for Sound Finance') to fight any limits on local expenditures" in connection with the legislative consideration of school finance revisions in California (Anderson, *Financing Schools: Search for Reform*, Washington Post, May 31, 1972.)

The obvious detriment to large cities inherent in the *Rodriguez* rule has driven apologists for the formula to suggest ever more desperate rationalizations. Thus, it has been suggested that the detriment to large cities might be in part mitigated by adopting a rule requiring not equal dollar spending but equal facilities, thus partially taking account of higher city costs. But the almost total unjustifiability and unenforceability of such a rule, which invariably draws the court into comparison of apples and oranges should be apparent. Other commentators have suggested that the solution is to be found in some formula, legislatively rather than judicially adopted, taking account of the factor of municipal overburden. The difficulty with such a suggestion is that "the National Educational Finance Project reached a different conclusion after analysis of a sample of school districts from eight States: 'no persuasive evidence of the existence of municipal overburden was uncovered.' Johns, et al., *Alternative Programs of Financing Education* 98 (1971)." (Dimond, *supra*, 2 Yale Review of Law and Social Action 140, note 38 (1971).)

Finally, there have been suggestions that although an unmodified *Rodriguez* rule may be detrimental to cities, the effect of *Rodriguez* type decisions is to induce States to reexamine their systems of school finance; it is inferred that such a reexamination can only result in benefit to cities. However, the history of recent and frequent amendments to State school finance formulas makes clear they have undergone continuous reexamination. As recently pointed out "equal statewide financing will take more money out of the central cities than it will give to them. * * * Under the Texas decision a State could theoretically choose to appropriate extra funds to deprived urban children. But it would be very difficult for the cities to get those appropriations through any legislature, as a matter of practical politics, in a period in which other wealthy districts were being held down." (Editorial, The Washington Post, May 31, 1972.)

Indeed, the most dramatic illustration of what the *Rodriguez* principle may mean in practice is supplied by the experience in New Jersey where, in pursuance of the will of the wisp of abstract numerical equalization in favor of small rural districts not really needing additional funds, a State court judge invalidated a new and progressive piece of reform legislation, the Bateman Act, which specifically addressed the problems of large cities by allocating available funds in heavy proportion to districts with large numbers of AFDC recipients.

There is no way a constitutional rule can readily take account of these problems. It has been demonstrated that the *Rodriguez* rule in general, would operate to the severe detriment of urban districts:

A decision by the United States Supreme Court attempting to differentiate among the states, would be entirely inappropriate. It would be most unwise to have basically similar state systems held invalid or valid depending on where the state's poor lived, or more accurately, depending on judges' views of the difficult statistical analysis demonstrating a correlation between poor people and poor school districts.

(Goldstein, *supra*, at 525. (22).)

Even if it is assumed that the changes adopted by State legislatures following invalidation of existing formulas gave some weight to problems of the cities, the net result would still be grave detriment to the long term interests of the deprived residents of cities. This is so because even the most sanguine exponents of the *Rodriguez* rule acknowledge that vast additional appropriations for education would be necessary to elevate districts to the level of the higher districts in each State and that the larger part of such appropriations would be channeled to districts without particularly pressing educational problems. Whatever marginal benefits might accrue to large cities from changes in educational spending patterns viewed alone would be more than offset by the waste of society's total resources and the detriment in the capacity of government to address other problems such as the urban unemployment which the Coleman Report and its defenders view as the gravest detriment to the educational and other interests of urban children. Thus, even one of the proponents of the *Rodriguez* principle, Professor Charles S. Benson has observed:

Assuming compliance with the dictum of *Serrano v. Priest* that wealth not influence quality of education within the states, one is led to the conclusion that state governments must allocate additional revenues to the public schools simply to establish such compliance. To remove the influence of wealth on education requires that expenditures in the large number of low wealth—low expenditure districts be brought up to acceptable standards. This can only be done by injecting money from a higher level of government into those districts. (No one can imagine that states could obtain compliance with *Serrano v. Priest* by forcing high wealth, high expenditure districts to reduce their expenditures sharply, one reason being that most of these expenditures are contractual in nature.) My concern is that State governments which are obliged to raise their education budget for this purpose of compliance will slight other social welfare activities, such as health, low cost housing, and the more developmental types of welfare accounts. There is strong reason to believe that performance of schools with respect to disadvantaged youth is itself extremely sensitive to these very kinds of expenditures that might suffer as

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States move toward compliance with Serrano. This would subvert whatever equalitarian purpose exists in *Serrano* * * *. (Mondale Committee Hearings, p. 7669.)

Similar concerns underlie the conclusion of a recent careful study of the history of State educational finance formulas:

Improving the condition of large city school systems can best be attained by a pinpointed Federal program that will deal with financing needs of the large cities and other areas containing the concentrations of poverty which are so costly to local governments, both in the educational and non-educational spheres. The financial requirements of suburban and rural school systems can be most adequately dealt with by the system of State and local finance which has been able to provide such large sums of money since the end of World War II. Large Cities, on the other hand, present problems which are very different and probably can be dealt with only on a national scale with a national resource base.

(Sacks, *City Schools, Suburban Schools: A History of Fiscal Conflict* (1972) at 177.) (23)

Plaintiffs, though claiming to represent all parents, children and taxpayers in their State, seek a rule profoundly destructive of their political rights. As to the rural districts in Texas and elsewhere in the country, local budgetary control over educational expenditures and a tradition of close accountability of school officials would be ended. As to urban areas, a process of political evolution which over the course of a century has given varying racial and ethnic groups, in Texas and in the large cities of the East and Midwest, a voice in fiscal control of their educational systems would be brought to an end and further shifts in influence over City educational policy precluded.

Finally, it has further been noted that "the variations in school expenditures per pupil, throughout the country, are mainly due to the differences in teachers' salary scales. The high salary scales are commonly protected by formal contracts between school boards and teachers' organizations. As a practical matter, in view of the political strength of the teachers' organizations, it is idle to suppose that salaries in the high-cost school systems can be cut or, following one proposal, can be frozen over a period of years while other systems gradually catch up. The alternative would be to equalize costs by increasing class sizes in high-budget areas. Here again the effects would be sharpest in the central cities, where the need for low pupil-teacher ratios is greatest." (Editorial, *The Washington Post*, May 31, 1972.)

COSTS OF THE RELIEF SOUGHT

The relief sought by plaintiffs will result in staggering costs to already heavily burdened State governments. The President's Commission on School Finance estimated the cost of elevating all school districts to the level of the 90th percentile in each State at \$6.2 billion and the cost of elevating all school districts to the 95th percentile in each State at \$8.8 billion. Since the larger part of school budgets

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consists of contractually obligated items such as teachers' salaries, bonds, contracts for pupil transportation and the like, it is unlikely that as a practical matter any State would find it possible to equalize at less than the 95th percentile. See the summary of the findings at Nation's Schools, May 1972, p. 8 and see Staff Report, President's Commission on School Finance, *Review of Existing State School Finance Programs*. These additional outlays are, of course, in addition to the rapidly rising ordinary level of expenditures with which State governments must keep abreast. The rate of increase in educational expenditures in recent years has far outstripped the rate of inflation and the rate of growth of the revenue resources of State governments. Thus, on a national basis, taxation and appropriation for public school systems increased by 67.4 percent between 1957-58 and 1963-64, see Advisory Commission on Inter-Governmental Relations, *State Aid to Local Government* (1969) at 56 (Mondale Committee Hearings, p. 8480). Similarly, State and local revenue receipts from own sources for public schools as a percentage of state personal income increased from 3.1 percent in 1957-58 to 4.6 percent in 1967-68. *Id.* The increasing militancy of teachers' unions suggests that this burden upon State governments is likely, if anything, to accelerate in its dimensions in the next several years. The present suits would saddle the States with the responsibility not merely of keeping abreast of ordinary demands for ever-increasing revenues, but also of finding the vast additional sums mentioned. Just how a burden of \$6.2 billion or \$8.8 billion per year upon the hard pressed State governments can be described as anything other than overwhelming is difficult to discern, given the fact that the pending revenue-sharing bill over which there has been so much travail will give State and local governments together only \$5 billion per year or roughly five ninths of the added burden which plaintiffs here would thrust upon them in a period of rising public demand for other governmental functions.

Some inkling of the burden which would be imposed upon particular States may be gleaned by comparing the sums necessary to raise school expenditures in given States to the 90th percentile now prevailing in those States with the revenues which would be generated from a 1 percent increase in existing sales taxes. The comparison for the 18 States which would be most heavily burdened in absolute terms by the *Rodriguez* rule is as follows:

Revenues per 1 percent of sales tax rate, present to 1969 (National Educational project, vol. 2, pp. 307-08). Total expenditures to raise 90th percentile (President's Commission on School Finance) Compact. April 1972, p. 28

California.....	\$421, 000, 000	\$731, 200, 000
Connecticut.....	50, 000, 000	126, 800, 000
Florida.....	143, 000, 000	117, 200, 000
Georgia.....	103, 000, 000	162, 600, 000
Illinois.....	234, 000, 000	401, 600, 000
Indiana.....	100, 000, 000	112, 900, 000
Maryland.....	66, 000, 000	175, 200, 000
Massachusetts.....	53, 000, 000	236, 000, 000
Michigan.....	199, 000, 000	326, 600, 000
Minnesota.....	58, 000, 000	107, 200, 000
Missouri.....	99, 000, 000	107, 100, 000
New Jersey.....	88, 000, 000	285, 600, 000
New York.....	350, 000, 000	537, 700, 000
Ohio.....	155, 000, 000	471, 800, 000
Pennsylvania.....	148, 000, 000	456, 800, 000
Texas.....	179, 000, 000	263, 400, 000
Virginia.....	70, 000, 000	130, 800, 000
Washington.....	94, 000, 000	107, 800, 000
United States as whole.....	3, 790, 000, 000	1 6, 200, 000, 000

¹ Estimate.

Similar comparisons with respect to income and property taxes may be made by recourse to the figures contained in the study of the National Educational Finance Project above cited. It is clear that the order of magnitude of the increases which will be required will be such as to totally preempt for a number of years one or more of the principal revenue sources in almost every State in the union and to render impractical tax increases or substantial budget increases for any other public purpose.

As elsewhere noted in this memorandum, no particularly useful public purpose would be served by this massive effort. In Maryland, for example, less than one-fourth of the total additional funds necessary would go to the city of Baltimore; the overwhelming proportion of it would be channeled to rural districts lacking pressing educational needs and the same is true elsewhere in the country. The chief, if not the only, beneficiaries of this massive disruption would be teachers' organizations which would swiftly organize on the State level to obtain the maximum portion of the newly appropriated revenues.

The interference with State and local budgeting which imposition of the *Rodriguez* rule would produce would be total. As Professor Coons and his colleagues have noted:

The adoption of a power equalized school district system would have analogous but more complex effects on other public services. * * * Power equalizing would alter the price of education for nearly all districts and the interdependencies of local services would assert themselves in contrasting ways. That is, this all would happen unless the state either mandated or assumed the cost of other services beside education. In fact, there are certain to be pressures toward such comprehensive fiscal neutrality. The *Serrano* idea will increase sensitivity to abuses in respect to other public services which have been long endured because of their

apparent inevitability; this dissatisfaction will be further stimulated by economists and politicians, some of whom will promote full state assumption of all services and others whom will argue for power equalizing these same functions. (Coons, Clune, and Sugarman, *A First Appraisal of Serrano*, 2 Yale Review of Law and Social Action 111 at 119 (1972).)

Professor Dimond has similarly noted:

I have not the vaguest notion of what the effect of fiscal neutrality in school finance alone will be on other public taxing and spending and private consumption and saving. I only know that Coons, et al., bear a high burden of proof that it is possible to tinker with 'just' the public school finance scheme. I suspect that requiring reform of public school finance systems will have a considerable impact on the patterns of all other public and private systems of raising and spending money. Those disinclined by philosophy to judicial intervention will be immensely troubled by that specter, and especially by its unknown contours.

Professor Yudof and Kirp have likewise noted:

The *Serrano* decision does of course have an impact on the legislature's capacity to set fiscal policy. If the legislature is prodded by a *Serrano* like suit to increase state education appropriations (a likely response), then the state will be obliged either to increase state taxing, or to cut back some other state supported program. *Serrano*, to put the point differently, imposes constraints on the legislatures' ability to trade off expenditures on public goods.

(2 Yale Journal of Law and Social Action at 147, note 4.)

Nor is there any reason to believe that the principles of *Rodriguez* will be limited in their impact to State programs. Rather it is clear that every Federal matching program will be potentially jeopardized by the decision, since almost by definition the ability of States to put up State funds to be matched is a function in some measure of their wealth.

It should be noted that this spelling out of the potential implications of *Rodriguez* is not a parade of horrors devised by counsel opposing application of that decision; it comes from the lips of the proponents of the doctrine themselves.

See also Schoettle, *The Equal Protection Clause in Public Education*, 71 Columbia Law Review 1355 (1971), noting the potential implications for the total budgeting process.

There is indeed no reason to believe that these opportunities will not be eagerly pursued once the door is open to lawsuits of this character attacking State and Federal taxing and spending programs. We have been told:

Serrano "opens a very large door" says John Silard, a Washington, D.C., attorney involved in school tax litigation. For the first time, he says, the courts are requiring "equal protection" in public programs. They are holding states accountable for how and where they spend public money. In his view, this means "a revolution in public

services", the schools, he predicts, are merely "the first bite at the big apple. Welfare obviously comes next, and I guess health too." * * * Some lawyers predict that if education is accepted as a fundamental interest, other public services are bound to follow. But they don't like to say it out loud. "They want this to stick", one attorney says. "You stress that education isn't like garbage. We are playing a game here. You have to (in order) not to frighten the courts away from a proposition that's sound."

(Andrews, *Tax "Revolution,"* Wall Street Journal, March 13, 1972, pp. 1, 12.)

The effective inseparability and indistinguishability of education from other services was noted by Judge Harvey in his decision in *Parker v. Mandel*, which repeatedly refers to "health, education and welfare" in declining to apply the *Serrano-Rodriguez* doctrine.

It will be recalled that the California Supreme Court felt obligated to issue a supplemental opinion when it was discovered that its initial edict was having an adverse effect upon State property tax collections. With the doctrine that plaintiffs propose the legitimacy of virtually all State taxation will be cast in peril in the eyes of many members of the public and the eyes also of at least the more exuberant members of the lower Federal judiciary. Professors Coons, Clune, and Sugarman have gleefully pointed to the factors which they hope will induce legislative acquiescence in their favored doctrine:

A prolonged period of turmoil and doubt in which aid formulas, validity of tax impositions, validity of bonds and retroactivity remain locked in a political struggle.

(2 Yale Review of Law and Social Action at 118.)

Surely, whatever their applicability in their original context, there is merit in this new context in the cautionary words of Judge Learned Hand on the duty of deference to the decisions of legislatures:

These men [Justices Holmes and Cardozo] believed that democracy was a political contrivance by which the group conflicts inevitable in all society should find a relatively harmless outlet in the give and take of legislative compromise after the contending groups had had a chance to measure their relative strength; and through which the bitterest animosities might at least be assuaged, even though the reconciliation did not ensue which sometimes follows upon an open fight. They had no illusion that the outcome would necessarily be the best attainable, certainly not that which they might themselves have personally chosen; but the political stability of such a system and the possible enlightenment which the battle itself might bring, were worth the price. * * * We face difficulties which are big with portent and uncertain of solution. Such solutions as will arrive, like all human solutions, will be likely to be inadequate and unfair placebos. But nevertheless they will be compromises, as government almost always must be in a free country; and if they are to be upset under cover of * * * majestic sententiousness, they are likely to become centers of frictions

undreamed of by those who avail themselves of this facile opportunity to enforce their will.

(Learned Hand, *Chief Justice Stone's Concept of the Judicial Function*, Dilliard (ed.), *The Spirit of Liberty* at 204, 207.)

CONCLUSION

The judgment should be reversed.
Respectfully submitted,

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CERTIFICATE OF SERVICE

I, George W. Liebmann, one of the attorneys for Amici Curiae Montgomery County, Maryland, et al., and a member of the Bar of the Supreme Court of the United States, hereby certify that on July 21, 1972, I served copies of the foregoing Amici Curiae Brief on the Appellees and Appellants by depositing such copies in the United States Mail, postage prepaid, and addressed to the attorneys of record for Appellees and Appellants as follows: Arthur Gochman, Esquire, 313 Travis Park West, 711 Navarro, San Antonio, Texas 78224, Mario Obledo, Esquire, 145 9th Street, San Francisco, California 94103, Counsel for Appellees. Pat Bailey, Esquire, Assistant Attorney General, P.O. Box 12548, Capitol Station, Austin, Texas 78711, Charles Alan Wright, Esquire, 2500 Red River Street, Austin, Texas 78705, Counsel for Appellants.

s/s GEORGE W. LIEBMANN

FOOTNOTES

(1) An organization known as the Medical Committee for Human Rights is presently orchestrating a barrage of lawsuits in this field. It no doubt will take a great interest in *Serrano*.

(2) Indeed, it is difficult to think of a more regressive area of public spending than higher education in which nearly all the benefits go to persons with the economic wherewithal to avoid joining the labor force before graduation from high school. Professor Coons has already suggested extension of the *Rodriguez* principle to publicly-supported junior colleges, 2 *Yale Review of Law and Social Action* at 120 note 32 (1971), describing them as an "inviting target."

(3) *Private Wealth and Public Education* (1969).

(4) See Berke and Callahan, *Serrano v. Priest, Milestone or Millstone*, 21 J. PUBLIC LAW 23, at 69 (1972) ("the courts will once again be called upon to sit in judgment on school resource allocations in a second or third round of post-*Serrano* litigation * * *").

(5) Plaintiffs' definition of "wealth" in relation to education means the possession by a taxpayer of an annual sum equal to approximately one-sixth the cost of a late model car, the use of which upon one's children's education is an offense which must relentlessly be pursued and prevented by the Federal equity power.

(6) There will be more cases like *Jelliffe v. Berdon* (U.S. D.C. Conn. Civil No. 14,821) where a Federal district court on May 15, 1972 denied a preliminary injunction to prevent the Town of Darien from erecting a public school in asserted violation of the *Serrano* principle. Cf. also *Ansell v. Howard County Council*, 264 Md. 629 (March 6, 1972).

(7) Indeed the Coons, Clune, and Sugarman book, is not dedicated, in the manner of most polemical treatises, to a hopefully enlightened public but rather "To Nine Old Friends of the Children."

(8) Indeed, plaintiffs are driven inexorably to this conclusion. The specious nature of the distinction which they would draw between *Serrano* and *McLinnis* may be appreciated by considering their probable attitude toward a statute providing for full State funding and going on to recite that the educational needs of the State required appropriating to the separate subdivisions in the precise unequal amounts spent under the total present system.

(9) 40 L. W. (2238) N. D. Fla., Oct. 12, 1971.

(10) See also Berke and Callahan, *Serrano v. Priest, Milestone or Millstone*, 21 J. PUBLIC LAW 23, at 62 (1972), criticizing power equalizing as unfair to urban areas.

(11) This is graphically illustrated by the supremacy given determinations by the Maryland State Board of Public Works in the recent legislation providing for full but not pre-emptive State assumption of school construction costs in that State. Md. Code, Art. 77, § 130A(g).

(12) That this has wide implications is evident. Compare the viewpoint of Simons, *Economic Policy for a Free Society* (1948) at 28-29.

"A society based on free responsible individuals or families must involve extensive rights of property. The economic responsibilities of families are an essential part of their freedom, like the inseparable moral responsibilities, are necessary to moral development. Family property in the occidental sense of the primary family, moreover, is largely the basis of preventive checks on population and of the effort to increase personal capacity from generation to generation, that is, to raise a few children hopefully and well or to sacrifice numbers to quality in family reproduction."

(13) The examples are legion. The delegations to States undertaken by Congress in enacting the McCarran-Ferguson Act, the Miller-Tydings Act, the Webb-Kenyon Act, and the Federal estate tax credit for State death taxes are of unassailable constitutionality, notwithstanding that Congress would almost certainly be barred by the apportionment clause from directly imposing the Federal estate tax at different rates in different states or (perhaps) from specifying in a State that "fair trade" agreements were legal in Kansas and illegal in Missouri.

Similarly, the conferral of home rule powers on local subdivisions has not been thought unconstitutional because the local Council of one subdivision enacted a regulatory ordinance which the local Council of an indistinguishable subdivision declined to enact, nor has it been thought that the resulting "discrimination" presents a problem of equal protection of the laws.

(14) In Maryland and in most Southern States where county districts are commonplace, nearly all the counties pre-existed the State, and the same is true of towns in New England. See *Liggett Co. v. Lee*, 288 U.S. 517 581 (1933) (Cardozo, J. dissenting) and authorities there cited. The special school and taxing districts characteristic of the midwestern States were likewise only in form of State origin and in their inception bore many of the characteristics of voluntary associations. Cf. *Cooley*; *Constitutional Limitations* 123 (2d ed. 1871); and see *Forsyth v. Hammond*, 166 U.S. 506, 518 (1897).

(15) Full State funding in Hawaii has limited local initiative. Contrary to plaintiff's postulate, it has not eliminated inequalities but merely rendered them less visible. Salaries per pupil in 1970-71 varied from \$407 in the Nimitz School to \$1181 in the Hookena School, against a State average of \$597. Hawaii Public Education Department, District Summary of School Expenditures, 1970-71.

(16) See *The Rand Corporation, How Effective is Schooling* (1972).

(17) The suit was later dismissed for want of prosecution.

(18) *Milliken v. Green*, Mich. Cir. Ct. Ingham County, No. 13664-C (1972).

(19) See Flexner and Bachman, *Public Education in Maryland* (1921), at 8.

(20) Existing disparities in Maryland are of a very modest order, and are largely attributable to the escalation of personal income in recent years in Montgomery County, the bell-wether subdivision—an escalation due in no small measure to the Federal pay comparability program, and to the effects of the 5-week Montgomery County teachers' strike in 1970. Cost per pupil for current expenses, including transportation in 1969-70 was \$972.84 in Montgomery County. In the other 23 subdivisions in the State the range was strikingly narrow, from \$597.92 in Somerset County on the eastern shore to \$767.19 in Baltimore County. Selected Financial Data, Maryland Public Schools, 1969-70, Part I, Table II. These figures do not take into account the new State assumption of school construction which heavily benefits the rural counties since State funds are available on a need basis. There is no reason to believe that Montgomery County children are enjoying peculiar benefits. Recent comparative studies of educational achievement in the Montgomery County schools indicate that children in those schools perform slightly below the national average of children of comparable intelligence on nationwide tests. *Washington Post*, November 23, 1971 p. C-1. Indeed, by a number of measures, Montgomery County schools are worse off than Somerset County schools. 23.3% of Montgomery County teachers have less than 2 years' experience as against 14.7% in Somerset County, 63% of Montgomery County teachers have more than 5 years' experience as against 78.9% of those in Somerset County. Maryland State Department of Education, *Experience of Teachers and Principals*, September 1969, Table 1.

(21) See the critical lead editorial in the *New York Times* for January 29, 1972, and see Buder, *City Rise Linked to Fleischmann Proposals* and Maeroff, *Suburban School Officials Fear Effect of a Freeze on Spending*, *New York Times*, February 2, 1972 at 47.

(22) Professor Goldstein also accurately observes: "Whatever correlation there is between the percentage of minority people and the tax base wealth of a school district in Texas may reflect the rural nature of Texas minority life or some other State peculiarity." *Id.* at 525 note 71.

(23) Indeed, the limited Federal and State programs focused on deprived urban areas are said to have already placed city high schools with large numbers of low-income children on a much better than average material footing. See Havighurst, et al. *A Profile of the Large-City High School*, National Association of Secondary School Principals, November 1970, quoted at Mosteller and Moynihan, *On Equality of Educational Opportunity* (1972), p. 11.